

GAO

Report to the Chairman, Committee on  
Ways and Means, House of  
Representatives

August 2000

# WORLD TRADE ORGANIZATION

## Issues in Dispute Settlement



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### Abbreviations

ATC	World Trade Organization Agreement on Textiles and Clothing
DSB	Dispute Settlement Body
EU	European Union
FSC	Foreign sales corporation
GATT	General Agreement on Tariffs and Trade
NAFTA	North American Free Trade Agreement
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property
TRQ	Tariff-rate quota
USTR	Office of the U.S. Trade Representative
WTO	World Trade Organization



United States General Accounting Office  
Washington, D.C. 20548

National Security and  
International Affairs Division

B-285799

August 9, 2000

The Honorable Bill Archer  
Chairman, Committee on Ways and Means  
House of Representatives

Dear Mr. Chairman:

U.S. participation in the World Trade Organization (WTO) reached the 5-year mark in 2000. The WTO was established through the Uruguay Round of international trade negotiations on January 1, 1995, replacing the General Agreement on Tariffs and Trade. Membership in the WTO has grown to 137 members, up from about 90 members in September 1986, at the start of the Uruguay Round. The WTO provides the institutional framework for the multilateral trading system, administers rules of international trade, and provides a forum for conducting trade negotiations. It also establishes a quasi-adjudicative dispute settlement system, which has come to be seen as the linchpin for the rules-based system of international trade. The WTO dispute settlement system has also become a lightning rod for those concerned about the direction of the trading system in an era of accelerating globalization.

This is the second report in response to your request that we conduct a review of the WTO's dispute settlement system. Our first report provided information on how WTO members have used the new system over the past 5 years.<sup>1</sup> In this report, we examine (1) the outcome and commercial impact of completed cases involving the United States and (2) the major issues that have emerged in using the system. This report supplements the observations we provided you on these issues in June 2000.

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## Results in Brief

Overall, the results of the WTO's dispute settlement process have been positive for the United States. Our examination of 42 completed cases involving the United States shows that most led to changes in foreign laws,

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<sup>1</sup>See *World Trade Organization: U.S. Experience to Date in Dispute Settlement System* (GAO/NSIAD/OGC-00-196BR, June 14, 2000). We also provided testimony on these issues: see *World Trade Organization: U.S. Experience in Dispute Settlement System: The First Five Years* (GAO/T-NSIAD/OGC-00-202, June 20, 2000).



regulations, and practices that offer commercial benefits to the United States. Conversely, none of the changes the United States has made in response to WTO disputes have had major policy or commercial impact to date, though the stakes in several were important. However, a ruling that U.S. tax provisions violated export subsidy rules has potentially high commercial consequences, but the United States has not fully determined how to comply with the ruling. In addition, WTO rulings have upheld major trade principles important to the United States, such as requirements that imported goods must be treated in the same way as domestic goods in applying internal taxes and regulations.

Four major issues surrounding the dispute settlement system have emerged. These issues are (1) how the dispute settlement system has affected U.S. sovereignty, (2) to what extent WTO members found to be in violation of rules are complying with WTO rulings, (3) how quickly the system resolves disputes, and (4) how open the WTO's proceedings are. Concerns over sovereignty have centered on whether rulings would weaken U.S. protections against unfair trade and on health, safety, and the environment. So far, this possibility has not proved to be the case, but concerns remain. With regard to compliance, members have generally changed their practices to comply with WTO rules, and the rate of compliance with decisions in U.S. cases is 75 percent, slightly better than that under the General Agreement on Tariffs and Trade. Further, while many U.S. complaints were resolved quickly, most complaints that went through the WTO panel or appellate process took longer than called for in the timetables set forth in the WTO agreements. Although the dispute settlement system has become more open and transparent since it was established in 1995, the public still has limited information about and input into the organization's proceedings. The United States has met resistance from other WTO members in seeking greater openness in the process.

## Background

The WTO provides the institutional framework for the multilateral trading system. The WTO is the successor of the General Agreement on Tariffs and Trade (GATT), which was created by post-World War II U.S. and European leaders who believed that open markets and a rules-based system of trade would promote international stability and prosperity and avoid damaging trade disputes. The 1994 Uruguay Round agreements, which created the

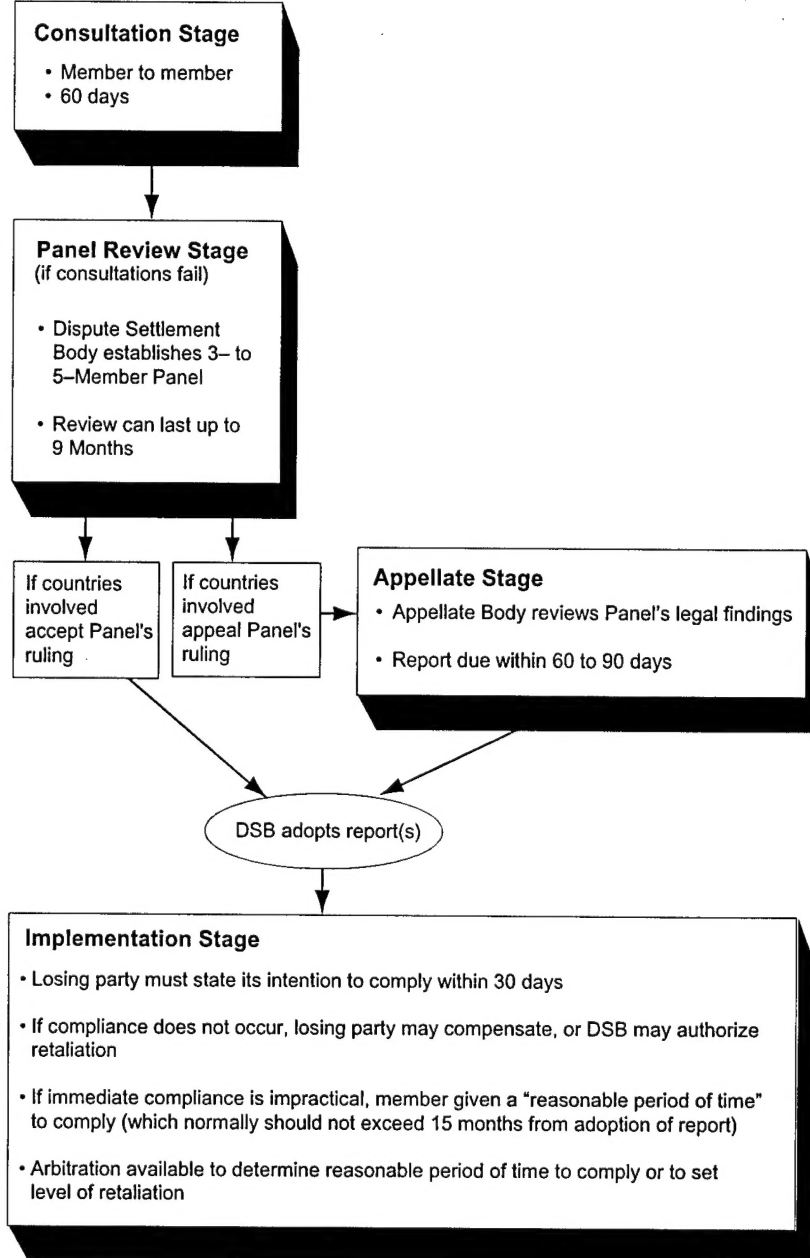
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WTO, vastly expanded the scope of multilateral trade rules by strengthening disciplines in traditional trade areas and broadening coverage to areas such as services and intellectual property. It also established a new dispute settlement system,<sup>2</sup> replacing the procedures that had gradually emerged under GATT. While the dispute settlement system facilitates the resolution of specific trade disputes, it also serves as a vehicle for upholding trade rules and preserving the rights and obligations of WTO members under the WTO agreements. WTO dispute settlement is central to U.S. efforts to monitor and enforce trade agreements—a major focus of U.S. trade policy.

Unlike the GATT, the WTO dispute settlement system discourages stalemate by not allowing parties to block decisions, and establishes a standing Appellate Body, which helps make the system's decisions more stable and predictable. WTO dispute settlement rules also set time limits for each step in the dispute settlement process, including (1) consultations, (2) panel review, (3) Appellate Body review, and (4) implementation of rulings (see fig. 1). Under these timetables, some of which are maximums and others minimums, WTO disputes that go all the way through the system should be resolved within approximately 2-1/2 years from the time an initial request for a consultation is filed through full implementation of a WTO Appellate Body ruling—a minimum of 17 months for the consultation and adjudication phases (if an appeal is involved) and up to 15 months to implement the final ruling. The dispute settlement process is administered by the Dispute Settlement Body (DSB), which is composed of representatives of all WTO members.

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<sup>2</sup>The agreement that governs this system is formally titled the "Understanding on Rules and Procedures Governing the Settlement of Disputes" and is generally referred to as the Dispute Settlement Understanding.

**Figure 1: Flow Chart of WTO's Dispute Settlement Process**

Source: GAO analysis.

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- *Consultations.* Before members take any other actions, the dispute settlement process calls on member countries to try to resolve disputes in discussions among themselves. Up to 60 days are typically allotted to this initial stage, known as "consultations."
  - *Panel adjudication.* If the parties to a dispute cannot reach a satisfactory resolution on their own, the complaining member is entitled to have an impartial panel of experts convened on an ad hoc basis to adjudicate the matter. The panel is composed of three, or by agreement of the parties, five, well-qualified governmental or nongovernmental persons with experience in the trade policy area. The WTO Secretariat proposes candidates to the panel,<sup>3</sup> and parties to the dispute may oppose nominations only for compelling reasons. Panelists are normally appointed by agreement of the parties and, once appointed, they serve in their individual capacities, not as government representatives. The panel phase may take 30 or more days for the panel to be appointed, plus 6 to 9 months for the panel to issue its findings in report form. Within 60 days, unless appealed or member countries decide by consensus to reject it, the report becomes a WTO ruling.
  - *Appellate Body adjudication.* Either side in a dispute can appeal the panel's ruling. The seven members of the standing Appellate Body are broadly drawn from WTO member countries and are to be people with demonstrated expertise in law, international trade, and the WTO agreements; three Appellate Body members consider each appeal. Normally, the Appellate Body should complete its consideration of the appeal within 60 to 90 days. The Appellate Body ruling, along with the panel ruling, as amended, is then adopted by the WTO within 30 days, unless member countries decide by consensus to reject it.
  - *Implementation.* Within 30 days of the ruling's adoption, a country that loses a case must state its intention regarding implementation of the recommendations of the panel or appellate ruling. Losing parties are encouraged to comply with WTO rulings. However, they may accept retaliation or provide compensation to the plaintiff as an interim measure. If complying with the recommendation proves immediately impractical, the country may request or be given an extension for a "reasonable period of time" to do so. This period is normally not to exceed 15 months. The implementation period can be set by agreement

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<sup>3</sup>The WTO Secretariat, which provides technical and legal support to WTO bodies and current and prospective members, maintains a list of governmental and nongovernmental individuals nominated by WTO members as possessing the requisite qualifications from which panelists may be drawn.

to a date proposed by the losing party, by mutual agreement of the parties, by binding arbitration or, in cases involving subsidies, by the panel.

- *Retaliation in the event of noncompliance.* If a member found to be violating WTO commitments does not conform to the WTO ruling or provide compensation within the established implementation period, the complaining party may seek authorization to retaliate. This shall be granted within 30 days after the implementation period ends, unless there is a consensus against doing so. Retaliation takes the form of suspending negotiated concessions or other WTO obligations. For example, a country could raise tariffs on the noncomplying country's goods. The level of retaliation must also be authorized and is to be equivalent to the amount of harm suffered by the complaining country. In case of disagreement regarding the level of retaliation, the original panel may be asked to arbitrate and issue a binding determination to be completed within 60 days from the end of the implementation period.

## Overall Positive U.S. Results From Dispute Settlement System

The United States has generally benefited from its experience with the WTO dispute settlement system, based on our analysis. We examined 42 completed WTO dispute settlement cases in which the United States was either plaintiff or defendant<sup>4</sup> and focused on the nature of the case, the commercial significance of the outcome, and the trade principles involved. (See app. I for a brief description of each case.) The majority of the 25 cases in which the United States was the plaintiff resulted in commercial benefits through greater market access or stronger intellectual property protection. In the 17 cases in which the United States was a defendant, the trade policy and commercial consequences of nearly all the challenges so far have been limited. The exception is a European Union (EU) challenge to the U.S. foreign sales corporation tax provisions (case 40), where the WTO ruled that the U.S. provisions constituted a prohibited subsidy. The United States has also benefited from WTO rulings that upheld important principles set forth in the WTO agreements.

<sup>4</sup>According to the Office of the U.S. Trade Representative (USTR), 42 cases involving the United States had been resolved either through a panel ruling or Appellate Body decision, a settlement between the parties, or some other resolution, from the WTO's inception in 1995 through mid-March 2000.

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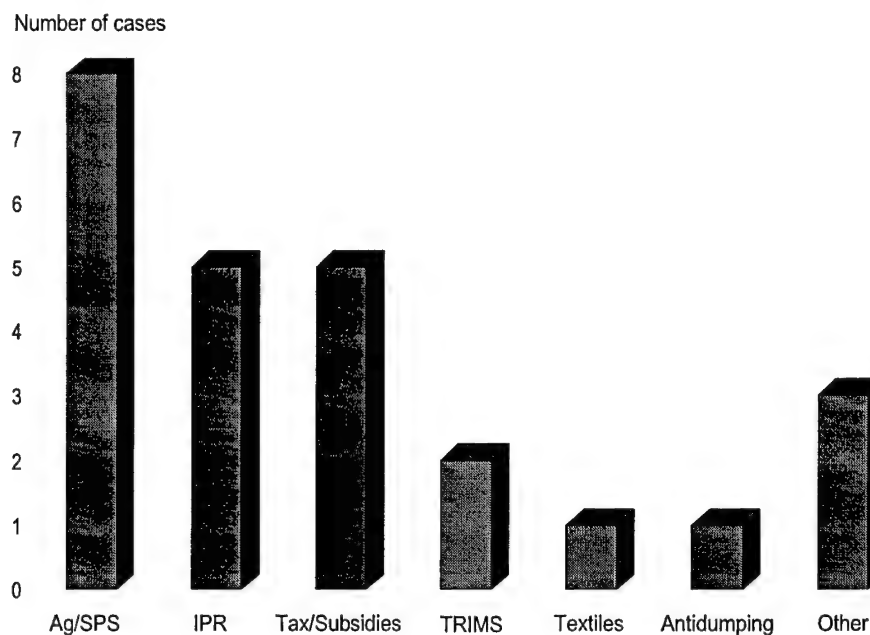
**The United States Has  
Achieved Commercial  
Benefits From Most of the  
Cases It Has Filed**

The United States has achieved benefits in most of the cases it has brought to the WTO dispute settlement process. The United States brought 25 of the 42 completed cases we examined, primarily in the areas of agriculture and sanitary and phytosanitary<sup>5</sup> measures, intellectual property rights, and taxes and subsidies (see fig. 2).

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<sup>5</sup>This refers to measures used to protect human, animal, and plant health. See *Agricultural Exports: U.S. Needs a More Integrated Approach to Address Sanitary/Phytosanitary Issues* (GAO/NSIAD-98-32, Dec. 11, 1997).

**Figure 2: Areas Involved in 25 WTO Cases in Which the United States Challenged Foreign Trade Practices**



**Legend**

Ag/SPS = Agriculture, and sanitary and phytosanitary measures (human, animal, and plant health)

IPR = Intellectual property rights (such as patent protection)

TRIMS = Trade-related investment measures (such as countries requiring that foreign firms limit their imports to the amount they export).

Note 1: "Antidumping" refers to additional duties imposed on imports when dumping, or sales at below home-market prices, is found.

Note 2: "Other" includes cases involving barriers in the Japanese film market, the EU's reclassification of certain computer equipment for tariff purposes, and India's restrictions on imports it claimed were based on balance-of-payments grounds.

Source: GAO analysis.

Of the 25 cases the United States filed with the WTO, 19 resulted in some agreed change in foreign laws, regulations, or practices. These have included removal of trade barriers, reductions in subsidies, and changes in intellectual property laws. As appendix II shows, 14 of the 25 cases resulted in commercial benefits for the United States.

Implementation of the WTO panel ruling in four disputes upholding U.S. complaints is either not yet complete or was contested. These four cases involve EU restrictions on banana imports and imports of hormone-treated beef, where compliance has not been attained;<sup>6</sup> Australian subsidies to automotive leather manufacturers, where compliance was disputed but resolved through negotiations; and Mexican antidumping measures on high fructose corn syrup, where Mexico has until September 22, 2000, to comply.

In two cases, the United States lost its challenge. Both cases involved important markets for U.S. exports. In the Japanese film case (case 19), the United States challenged Japanese government practices that it argued fostered barriers to access and distribution of U.S. photographic film in Japan's approximately \$2.5 billion to \$3 billion market. The WTO ruled against the United States, finding that it had not demonstrated that Japan had nullified and impaired U.S. benefits or violated specific WTO commitments. In the second case, the EU increased tariffs on certain computer equipment by changing the classification of these products (case 27). At the time, U.S. producers accounted for half of the \$5-billion European market. The WTO ruled that the EU did not violate its obligations by changing the classification of these products since its WTO commitments did not specifically identify them in a particular tariff category. However, the Information Technology Agreement reduced tariffs on these products to zero, mitigating the impact of the adverse ruling.

### Challenges Against the U.S. Practices Have Had Limited Impact to Date

Other WTO members challenged U.S. practices in 17 cases, primarily involving antidumping, textiles, and the section 301 trade law<sup>7</sup> (see fig. 3). Of the 17, a WTO panel or the Appellate Body ruled against the United States in 6 cases, in favor in 1 case, and in 10 cases the dispute was resolved prior to a panel decision. As discussed in more detail later, the changes to U.S. policy in response to these cases have been relatively minor.

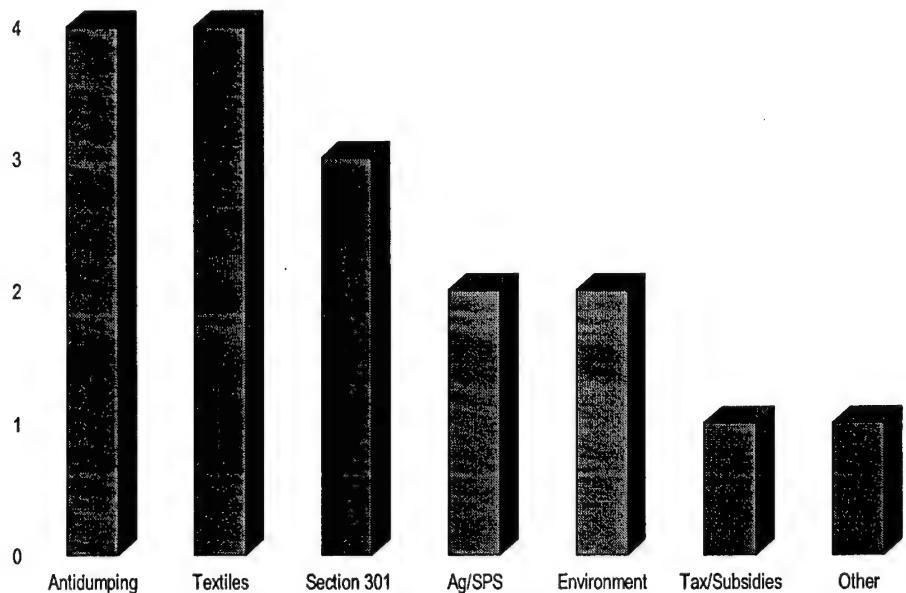
<sup>6</sup>See discussion on compliance later in this report for information on compliance issues.

<sup>7</sup>Section 301 of the 1974 Trade Act, codified at 19 U.S.C. § 2411, addresses foreign unfair trade practices affecting U.S. exports of U.S. goods or services and intellectual property protection.



**Figure 3: Areas Involved in 17 WTO Cases in Which Other WTO Members Challenged the United States**

Number of cases



**Legend**

Ag/SPS = Agriculture, and sanitary and phytosanitary measures (human, animal and plant health)

IPR = Intellectual property rights (such as patent protection)

TRIMS = Trade-related investment measures (such as countries requiring that foreign firms limit their imports to the amount they export).

Note 1: Section 301 of the 1974 Trade Act addresses foreign unfair trade practices affecting U.S. exports of goods or services, and intellectual property protection.

Note 2: "Antidumping" refers to additional duties imposed on imports when dumping, or sales at below home-market prices, is found.

Note 3: "Other" includes an EU challenge to certain extraterritorial aspects of U.S. sanctions on Cuba.

Source: GAO analysis.

While some of the 17 cases have also had high commercial stakes, the outcomes of all except one have had limited or no commercial effect. For example, in a case challenging U.S. antidumping duties on imports of urea (primarily used as a fertilizer) from the EU (case 28), the United States removed the duties after it found that U.S. industry was not interested in maintaining them. The one case with a potentially very high commercial impact involves U.S. tax exemptions for foreign sales corporations

(case 40). The WTO found that the exemptions were prohibited export subsidies and violations of U.S. commitments. The United States has until October 1, 2000, to comply with the WTO ruling, but has not yet fully determined how it will implement it.

## WTO Disputes Have Reinforced Principles of Trade Agreements

In the disputes involving the United States, WTO decisions upheld trade principles important to the United States. These rulings in the WTO's first 5 years have helped to establish a more consistent interpretation of WTO agreements and members' obligations and have reaffirmed long-standing trade principles.<sup>8</sup>

- The United States successfully challenged India's quantitative restrictions and import bans on 2,700 products that India justified under WTO balance-of-payments provisions (case 35).<sup>9</sup> The WTO panel and the Appellate Body found that India's balance-of-payments situation did not justify the measures, and India agreed to phase out these restrictions. The decision is an important signal to other countries that the WTO will not permit the inappropriate use of balance-of-payments provisions to restrict trade, according to USTR.
- Another long-standing trade principle—national treatment—generally requires that foreign goods should receive treatment no less favorable than that accorded to domestic goods. Under this principle, the United States successfully brought WTO challenges against both Japan's and Korea's taxation of distilled spirits (cases 4 and 32). In both countries, certain domestically produced liquor received significantly lower tax treatment than other varieties that were primarily imported. The WTO found that this treatment was discriminatory because the products were either "like" or "directly competitive" with the domestic products. Both countries complied with the decisions by equalizing their tax rates on foreign and domestic distilled spirits. A case regarding Turkey's differential taxes on foreign and domestic films also involved national treatment issues (case 18). The U.S. film industry noted that Turkey is the largest market for films in the Middle East, with 1999 revenues of

<sup>8</sup>Although the rulings of WTO panels and the Appellate Body do not establish "precedents" as do judicial rulings in the United States and other common law systems, decisions of the panels and especially the Appellate Body do to some extent rely on previous rulings.

<sup>9</sup>These provisions allow a WTO member to temporarily impose price or quantity restrictions on imports when facing a serious decline or a low level of its monetary reserves in order to increase its foreign currency holdings.

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\$23 million. Turkey agreed to equalize its tax rates, and a U.S. film industry association cited this successful resolution of the dispute as useful in discussions with other countries with similar measures.

Even in cases in which the United States did not prevail, important trade principles were upheld. In a case involving wool shirts from India (case 12), for example, the WTO Appellate Body ruled that a U.S. import restraint was improper but upheld the principle that the burden of showing that the import restraint was inconsistent with WTO principles was on the complaining party, which in this case was India.

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## Major Issues Arising in Use of the WTO Dispute Settlement System

Several important concerns have emerged regarding the WTO dispute settlement system. Some of these issues were identified during the Uruguay Round negotiations.<sup>10</sup> Other issues were identified by trade experts and other interested parties based on experience during the first 5 years of WTO dispute settlement. They include (1) the question of how the dispute settlement system has affected U.S. sovereignty, (2) the extent to which members found to be in violation of WTO obligations are complying with the WTO's rulings, (3) the timeliness of the system for resolving disputes, and (4) the transparency of the WTO's proceedings.

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### Dispute Settlement System's Impact on U.S. Sovereignty

The nature of the WTO dispute settlement system has been the subject of long-standing concern about how its decisions will affect U.S. sovereignty.<sup>11</sup> Our review of the 42 completed dispute settlement cases involving the United States focused on sovereignty issues in three areas. We found (1) the United States has benefited from protections that are built into the WTO dispute settlement system and U.S. implementing legislation that preserve the U.S.' flexibility in responding to WTO rulings; (2) the United States has so far withstood challenges to the use of domestic trade law to act against foreign unfair trade practices, although more are in the pipeline; and (3) WTO rulings to date against U.S. environmental measures have not weakened U.S. environmental protections, but environmental groups

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<sup>10</sup>Issues identified during the Uruguay Round negotiations are discussed in *The General Agreement on Tariffs and Trade: Uruguay Round Final Act Should Produce Overall U.S. Economic Gains* (GAO/GGD-94-83A&B, July 29, 1994).

<sup>11</sup>Although the word "sovereignty" has varied meanings, as used in this report sovereignty refers to how U.S. participation in the WTO dispute settlement system affects the U.S. government's authority over its domestic and foreign actions.

## Flexibility in Responding to WTO Rulings Protects U.S. Sovereignty

remain concerned over the impact of these rulings and the system's capacity to handle such complaints.

As an intergovernmental forum, the WTO makes rulings that are fundamentally different in character from rulings by U.S. courts. The WTO itself cannot "strike down" U.S. laws, as U.S. federal courts can, nor can it require the United States to modify domestic laws, regulations, or policies, such as its environmental laws, even if they conflict with WTO trade rules. Instead, WTO rulings identify aspects of the WTO member's policy that conflict with WTO rules and recommend that the member bring them into conformity.

Under WTO dispute settlement rules, compliance is the preferred way of responding to an adverse WTO ruling. However, a member may decide not to comply and either offer equivalent compensation or face foreign retaliation. These options, which are considered under the dispute settlement rules to be temporary, were designed to protect sovereignty.

Another sovereignty protection is that both panels and the Appellate Body are expressly prohibited from adding to or detracting from the rights and obligations provided in the WTO agreements. An innovation that the United States sought in the Uruguay Round—the establishment of a standing Appellate Body—has proved to be an important check on the system during the WTO's first 5 years, substantially revising panel rulings the United States argued had raised sovereignty problems. For example, in the Venezuela gas and shrimp-turtle cases (cases 1 and 25) that challenged U.S. environmental regulations, the Appellate Body modified WTO panel rulings that had, in the U.S. view, unacceptably limited the right of members to take measures to protect the environment. The Appellate Body played a similar role in the U.S. case against the EU's ban on hormone-treated beef (case 8) when it affirmed that a member retains the right to set its own levels of human health protection, provided that the member complies with WTO requirements in promulgating measures to achieve that level.<sup>12</sup>

In joining the WTO, however, the United States committed itself to abide by the WTO rules. The United States played a major role in shaping those rules

<sup>12</sup>Specifically, the requirements of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. U.S. consumer and health groups are concerned that these requirements and their interpretation by dispute panels could affect regulators in taking action against perceived health risks.

through its active participation in eight rounds of multilateral trade negotiations over a 50-year period. These and any new WTO rules are only established after a consensus is reached among WTO member governments to do so. The United States maintains that it has the right not to comply with WTO rulings. However, the United States recognizes that it may bear a penalty for not complying with WTO rulings, both in the form of retaliatory duties on U.S. exports and in terms of its reputation as a key player in the world trading system.

WTO dispute settlement rulings against the United States are not implemented unless and until Congress or the executive branch takes action to do so through legislation, regulation, or other administrative processes.<sup>13</sup> USTR is required to consult with Congress, statutory private sector trade advisory committees, and state officials before U.S. agencies can make changes in U.S. agency regulations or practices in response to a WTO ruling. The head of the relevant agency must also provide an opportunity for public comment.<sup>14</sup>

As a result of the 17 WTO cases against the United States, one U.S. law, two regulations, and one set of guidelines have been changed. To date, the changes have been relatively minor. For example, in May of this year, the United States amended a 1996 law for determining the country of origin of U.S. textile and apparel imports, in response to a WTO case filed by the EU (case 31). The amendment changed the country of origin of certain fabrics including silk, and of certain goods such as scarves, from where the raw fabric was made to where the product was both dyed and printed with two additional finishing operations.<sup>15</sup> According to Department of Commerce statistics, the affected EU exports to the United States are relatively small.

#### WTO Cases Challenging U.S. Domestic Trade Law

In implementing the Uruguay Round agreements, Congress sought assurance that the WTO's new dispute settlement mechanism would not

<sup>13</sup>Section 102(a)(1) of the Uruguay Round Agreements Act, 19 U.S.C. § 3512 (a)(1) states that "[n]o provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect." Section 102(c) precludes private actions challenging U.S. laws or governmental actions as being inconsistent with the Uruguay Round agreements.

<sup>14</sup>Sec. 102 (b) and § 123 (f) and (g) of the Uruguay Round Agreements Act, 19 U.S.C. §§ 3512(b), 3533 (f) and (g).

<sup>15</sup>22 U.S.C. § 3592(b)(2) was amended by a provision in the Trade and Development Act of 2000 (P. L. 106-200, § 405).

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undermine U.S. ability to act against foreign unfair trade practices, particularly under section 301 of the Trade Act of 1974 and under statutes designed to counter foreign subsidies or dumping (sales of products abroad at prices below those charged in the home market).

Despite three WTO complaints involving section 301,<sup>16</sup> the United States has continued to use the law to address foreign trade barriers. The average number of section 301 investigations that the United States initiated actually increased from 1995 through 1998 compared to the previous 5 years.<sup>17</sup> However, the United States is referring significantly more cases to the WTO for resolution now as compared to the 1990 through 1994 period.<sup>18</sup> These cases often involve new trading rules, such as those on intellectual property, agricultural subsidies, and trade-related investment. Three challenges of U.S. section 301 actions have been brought before the WTO, but only one resulted in a WTO ruling, which upheld the ability of the United States to use the law consistent with WTO requirements.

- A challenge launched just shortly after the WTO began operating involved a request by Japan for WTO consultations in response to a U.S. announcement of retaliatory duties under section 301 on \$5.9 billion worth of Japanese auto imports (case 3). Japan questioned the U.S. action's consistency with WTO rules since the United States acted without WTO authorization, but a bilateral deal was reached on the day set for the United States to actually impose the duties, and Japan did not pursue the matter further in the WTO.
- The EU made a largely unsuccessful challenge against U.S. section 301 and related provisions, alleging that aspects of the U.S. legislation effectively required the USTR to make decisions about foreign trade barriers before a WTO determination on whether a foreign trade practice had violated WTO rules or whether retaliation was warranted (case 42). The WTO panel found that though on its face the statute conflicted with WTO requirements, it did not violate WTO rules

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<sup>16</sup>Three of the 42 cases we examined involved complaints over U.S. section 301.

<sup>17</sup>The average of 5.5 cases in the 1995 through 1998 period is also higher than the 4.8 average during the entire 1975 through 1994 period.

<sup>18</sup>During 1990-94, only 3 of 16 section 301 cases were referred to the GATT for resolution; during 1995-99, 15 of the 24 section 301 cases were referred to the WTO for resolution.

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because of U.S. assurances that the United States would abide by WTO timetables and decisions in implementing the law.<sup>19</sup>

Only one of the four cases against U.S. antidumping measures resulted in a WTO ruling, and none of the cases against U.S. antidumping measures were seen as resulting in weakened U.S. protections. In the case involving a ruling, Korea challenged a U.S. Department of Commerce decision not to revoke an antidumping order on semiconductors (case 36). The WTO panel rejected almost all of Korea's arguments. However, it ruled against the United States on one of the Korean complaints. In response to this panel ruling, Commerce modified one of its antidumping order review procedures. After completing a review under the new procedures, Commerce determined that the antidumping duties should remain in effect. According to Commerce officials, the change in procedures does not weaken the U.S. antidumping regime.

A number of challenges to U.S. antidumping and countervailing duties (tariffs levied to offset government export subsidies) that were beyond the scope of our study are in the pipeline, mostly in the steel sector. However, it is too early to predict the commercial or policy consequences of these cases for U.S. sovereignty. The pending challenges include challenges to U.S. antidumping measures on imports of Korean stainless steel and Japanese hot rolled steel, a U.S. countervailing duty action against lead bar and steel imports from the United Kingdom, and challenges by the EU and Japan to the 1916 Antidumping Act,<sup>20</sup> which provides for antitrust-like remedies (treble damages) against price underselling of foreign goods.

#### WTO Cases Involving U.S. Health, Safety, and Environmental Measures

Concerns have also been expressed by Members of Congress, some legal experts, and interest groups that the WTO dispute settlement system may interfere with the U.S.' ability to set and enforce health, safety, and environmental measures. Such concerns surfaced in two U.S. cases dealing with environmental issues, both of which the United States lost.

WTO members may claim exceptions to WTO rules in certain circumstances to set and enforce health, safety, and environmental measures. These exceptions, found in GATT article XX, protect U.S.

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<sup>19</sup>The panel stated that if the United States repudiated its assurances, its conclusions that these provisions were consistent with U.S. WTO obligations would no longer be warranted.

<sup>20</sup>15 U.S.C. § 72.

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sovereignty. When WTO members challenged two U.S. environmental measures as discriminatory, the United States acknowledged that it treated foreign products differently but said these differences were based on valid policy concerns, not disguised protectionism. Specifically, the United States argued as follows:

- In the gasoline imports case brought in 1995 against the United States by Venezuela and Brazil (case 1), the United States said that the Environmental Protection Agency was concerned that it would be difficult to enforce the same rules for gasoline domestic products and imports in setting baselines, which are used to assess refiners' performance in meeting the goals of the 1990 Clean Air Act.<sup>21</sup>
- In the 1996 shrimp-turtle case brought by four Asian countries, the United States argued (case 25) that shrimp trawling was among the leading factors driving sea turtles to the brink of extinction. The United States noted that the U.S. law in question<sup>22</sup> was designed to encourage nations to require comprehensive use of turtle extruder devices, which reduce turtle deaths. Since not all nations had adopted such requirements, the United States banned imports of shrimp from those that had not.

Despite the U.S. arguments in these cases, the WTO ruled that the U.S. measures violated WTO obligations. Nevertheless, the U.S. environmental objectives were maintained.

- First, the WTO Appellate Body found the U.S. measures were eligible for one of the exceptions enumerated in article XX, after the initial panel had ruled they were not. This means that the United States is allowed to take these kinds of trade measures to attain its U.S. environmental objectives of conserving air quality and protecting sea turtles and still meet its WTO obligations, so long as they are consistent with the introductory clause of article XX. The clause requires that measures not be a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.
- Second, the United States was ultimately able to comply with the WTO rulings by making changes in the way the affected laws are

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<sup>21</sup>42 U.S.C. § 7545(k).

<sup>22</sup>Section 609 was one of the general provisions in the fiscal year 1990 Departments of Commerce, Justice, and State Appropriations Act, Public Law 101-162, 16 U.S.C. § 1537 note.



administered. Agency officials say these changes do not compromise their environmental objectives. In a case brought by Venezuela and Brazil (case 1), the Environmental Protection Agency changed a regulation implementing the 1990 Clean Air Act pertaining to the cleanliness of conventional gasoline in 1997. The change gives foreign suppliers the option of using a baseline for calculating gas cleanliness, based on their own performance rather than on an agency-established baseline (this treatment was already afforded to domestic suppliers). The Environmental Protection Agency also put in place a mechanism to offset any deterioration in the overall cleanliness of gas imports. In the shrimp-turtle case, the United States took steps to make the process it uses to certify that countries have comprehensive sea turtle conservation programs fairer and more open. It also began pursuing negotiations with countries toward adoption of multilaterally agreed-upon sea turtle conservation measures. However, environmental groups are still concerned about another change in U.S. guidelines made during the shrimp-turtle case that allows shrimp to be imported into the United States from countries that do not have comprehensive turtle conservation requirements.<sup>23</sup>

Beyond the outcome of these specific cases, concerns remain about the dispute settlement system's capacity to deal with complex regulatory issues. Dispute settlement cases involving health, safety, and environmental matters necessitate that WTO panels balance trade against other concerns and weigh scientific and technical evidence. This raises two issues: (1) whether the WTO is the appropriate forum for such decisions and (2) whether the WTO is adequately equipped to make such decisions. Regarding the first issue, some U.S. health, consumer, and environmental organizations say that decisions involving balancing trade with other concerns are inherent policy choices best made by national governments and their citizens, not the WTO. In this regard, some maintain that as an organization dedicated to reducing trade barriers, the WTO cannot impartially address issues that involve policy goals that may conflict with

<sup>23</sup>The Department of State implemented this particular change in guidelines just prior to the WTO Appellate Body's ruling on the case, and environmental groups say it weakens protection of sea turtles. State is periodically reviewing whether the change in guidelines is causing nations to abandon comprehensive conservation programs. So far this has not been the case. Brazil and Australia are the only countries permitted shipment-by-shipment entry. In addition, Thailand has been certified as having a comprehensive conservation program, and Pakistan has just received U.S. certification. Nevertheless, State's change in guidelines is currently being challenged in the U.S. courts by U.S. environmental groups and a preliminary ruling against State has been issued.

free trade. For example, some consumer and environmental groups maintain that WTO dispute settlement panels in these U.S. cases did not show sufficient deference to domestic regulators' enforcement concerns. Regarding the second issue, there is concern that WTO panels, which are generally composed of trade officials, may lack or fail to seek the scientific and other technical expertise needed to fully evaluate complaints over complex factual matters such as health risks or alternative means of attaining regulatory goals.<sup>24</sup> While U.S. courts are often asked to review such issues, some nongovernmental organizations and legal experts say U.S. courts are better equipped to do so than the WTO dispute settlement process, which in their view lacks sufficient procedural protections to ensure impartiality and due process.

### Members Generally Complying With WTO Rulings, but Some Problems Remain

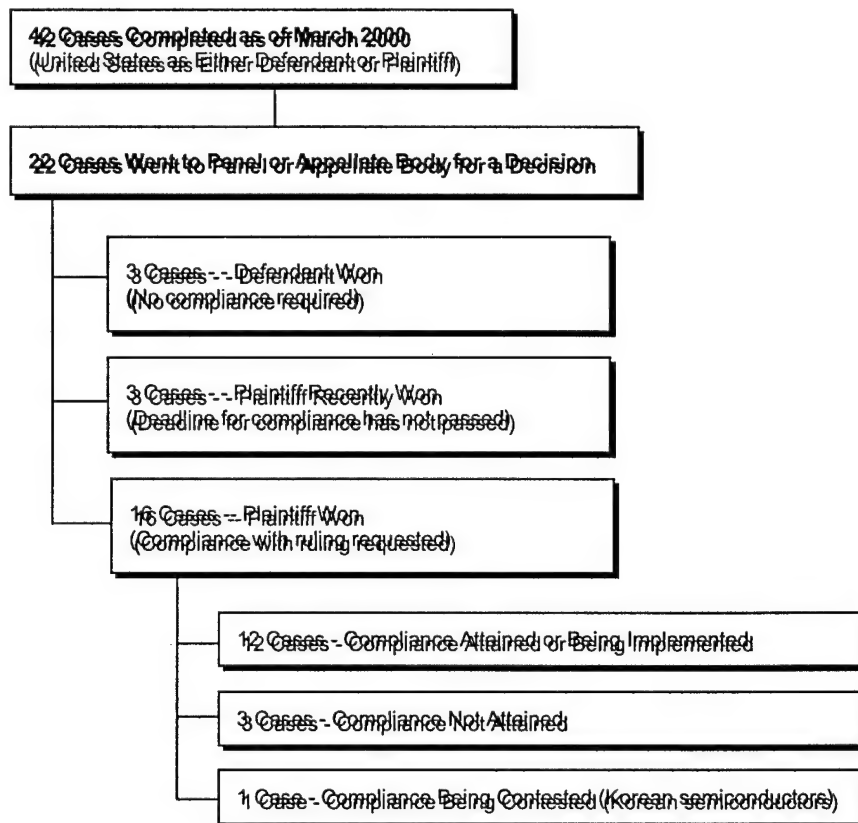
Compliance with WTO rulings has generally been achieved in the 42 completed cases we examined. In 4 cases, however, it has been alleged by the complaining countries that some countries, including the United States, have failed to fully comply with the WTO rulings. In other cases, countries have complied with the rulings in ways that provide limited improvements in market access. The United States has proposed changes to improve compliance with WTO rulings.

In disputes involving the United States, WTO members have complied with WTO rulings about 75 percent of the time (see fig. 4). This is somewhat better than the overall rate of member compliance with WTO rulings (65 percent). It is also better than the average rate of full compliance under the GATT dispute settlement mechanism during its first 40 years of operation (67 percent).<sup>25</sup>

<sup>24</sup>The dispute settlement understanding permits panels to consult with experts, and panels have done so in some cases.

<sup>25</sup>See Robert E. Hudec, *Enforcing International Trade Law* (New Hampshire: Butterworth Legal Publishers, 1993), p. 290, table 11.10 and table 11.3, and pp. 278-79.

Figure 4: Compliance With WTO Decisions in 42 Completed U.S. Cases



Source: GAO analysis.

Failure to comply with the WTO ruling was alleged to have occurred in four of the cases we examined. First, U.S. compliance is currently being contested in a case involving a U.S. antidumping order on Korean semiconductors (case 36). Although the United States changed its antidumping procedures as a result of the WTO panel ruling, Korea claims the change does not fully comply with the ruling. Second, the EU chose not to lift its ban on beef treated with growth hormones to comply with WTO rules and instead accepted retaliation (case 8). Third, in a case involving

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the EU's banana import regime (case 6), the WTO subsequently authorized the United States to retaliate.<sup>26</sup> Fourth, in a case brought by the United States against Australian subsidies to an automotive leather manufacturer (case 24), the WTO panel ruled that Australia had not complied with its ruling, but the United States and Australia reached a negotiated solution.

Compliance with WTO panel rulings does not always guarantee the desired outcome, because WTO members can sometimes comply with WTO rulings in ways that remove discrimination but do not liberalize market access. In the 1997 Korean liquor tax case (case 32), for example, Korea equalized barriers, rather than lowering them, by raising taxes on its domestic products to the level of taxes on imports. In the case involving Canada's restrictions on imports of U.S. magazines (case 10), Canada complied with the ruling but then introduced legislation that, if enacted, would have placed new restrictions on advertising by foreign magazine publishers. Canada and the United States ultimately resolved the dispute through additional bilateral negotiations that resulted in an agreement easing the Canadian restrictions and lowering other barriers.

U.S. proposals to improve compliance with WTO rulings include clarifying procedural ambiguities and allowing more aggressive U.S. retaliation in cases where compliance is not attained.

- The United States and other WTO members are considering procedural changes to the agreement establishing the dispute settlement mechanism to avoid a situation in which the timing of authorization to retaliate and the review of the sufficiency of compliance measures may

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<sup>26</sup>As a result of the EU's failure to comply with WTO rulings on the EU's ban on hormone-treated beef and the EU banana import regime, the United States was authorized to impose trade restrictions on \$308 million worth of annual U.S. imports from the EU.

be in conflict,<sup>27</sup> an issue that arose in the EU banana regime case.<sup>28</sup> In the meantime, procedural ambiguities about the timing of these procedures have generally been resolved by agreement among the parties to disputes.<sup>29</sup>

- The Trade and Development Act of 2000<sup>30</sup> requires the U.S. Trade Representative to periodically rotate the list of products subject to retaliation if implementation of a WTO ruling is not imminent.<sup>31</sup> U.S. legislators introduced this provision in the act, referred to as a "carousel," because initial U.S. retaliation failed to prompt the EU to comply with WTO rulings on the EU's ban on hormone-treated beef and EU banana regime cases. The U.S. Trade Representative is considering changes to the U.S. retaliation list in both cases to meet the provisions of the act. However, the EU has recently questioned the carousel provision's consistency with U.S. WTO obligations by requesting WTO dispute settlement consultations with the United States.

Ultimately, compliance with WTO dispute settlement procedures must be evaluated on a relative scale, since compliance cannot be mandated, and retaliation cannot necessarily compel countries to change. Indeed, some business and consumer interests question the wisdom of U.S. retaliation, because it restricts trade and hurts consumers. At a more fundamental

<sup>27</sup>Article 21 of the WTO Dispute Settlement Understanding states explicitly that any disagreement about the sufficiency of implementation measures must be resolved through dispute settlement procedures. On the other hand, article 22 sets specific deadlines for requesting and receiving authorization to retaliate, deadlines that could be missed if the review of the sufficiency of compliance measures is still ongoing.

<sup>28</sup>This occurred in the EU banana import regime dispute where the EU attempted to block U.S. efforts to take retaliatory measures, insisting that the procedure for authorizing retaliation can only occur after a review of the sufficiency of compliance measures and must involve a whole new panel proceeding. Subsequently, a WTO dispute settlement panel indicated that an entirely new panel proceeding was not required and that the panel determining the amount of retaliation can also assess the sufficiency of the compliance measures.

<sup>29</sup>For example, the United States challenged Australia's compliance with the automotive leather export subsidy decision; the parties agreed to reconvene the original panel to review Australian compliance. Also, the United States and Malaysia agreed on how to proceed if efforts to resolve Malaysia's concerns over U.S. implementation of the shrimp-turtle ruling fail.

<sup>30</sup>Public Law 106-200, 114 Stat. 251, § 407.

<sup>31</sup>Rotation of products is intended to subject more products to higher duties and increase uncertainty, thereby providing a greater incentive for compliance.

level, most legal experts say it is unrealistic to expect the system to produce 100 percent compliance, given its design. Several international legal experts suggested to us that diplomacy offers the best hope of resolution of politically sensitive disputes as was done, for example, in the case of the EU challenge to the U.S. Helms-Burton law, which codified U.S. economic sanctions against Cuba (case 16). They also said that retaining the option of noncompliance (through acceptance of retaliation or provision of compensation) is an important safety valve for broader acceptance of the WTO's essentially automatic dispute settlement system.

### Timeliness of the WTO Dispute Settlement System

While WTO disputes have generally been resolved within several months of the established timetables,<sup>32</sup> the timeliness of WTO dispute resolution remains a concern to U.S. businesses interested in achieving the negotiated benefits of the WTO agreements. Although many U.S. complaints were settled quickly, of the 15 U.S. complaints we examined that went to adjudication, about 80 percent are taking longer than the established timetables call for. However, the time given countries to implement WTO rulings is generally within established guidelines.

- Many of the U.S. cases—20 of 42—have been resolved quickly by the parties to the dispute. For example, all but one (India patent mailbox-case 21) of the five intellectual property rights cases were resolved without resort to a panel. On average, the 10 cases the United States initiated that were resolved prior to a panel ruling took about 11 months to resolve. The 10 cases brought against the United States that were resolved prior to a panel ruling were resolved even faster—4 months on average.
- The 15 cases the United States filed that went to panel and/or appellate adjudication resulted in adoption of final WTO rulings within an average of 21 months of the date of the initial U.S. request for consultations. This is longer than the 17 months in the agreed timetables for the consultation and adjudication processes. Only 3 of the 15 U.S. cases resulted in a ruling within 17 months. Difficult cases, such as those involving the India balance-of-payments situation, Canada's dairy subsidies and quotas, and the EU's ban on hormone-treated beef, took considerably more time (between 24 to 27 months). For cases brought

<sup>32</sup>Terence P. Stewart and Amy Ann Karpel, *Review of the Dispute Settlement Understanding: Operation of Panels*, paper presented at American Bar Association Symposium on The First Five Years of the WTO (Washington, D.C.: Jan. 20-21, 2000).

against the United States, the timing was closer to the timetables, with rulings in 19 months on average.

- The time provided for WTO members to implement final WTO dispute settlement rulings in most cases has fallen well within WTO guidelines of 15 months. It ranged from as little as 3 months in the Australia leather case (case 24), to 8 months for a case involving Argentina's restrictions on imports of textiles, apparel, and footwear (case 23) and for the Korea semiconductors case (case 36), to 65 months for a case (case 4) involving Japan liquor taxes (the United States secured concessions for agreeing to this extended implementation period). For the cases we examined, an implementation period of between 9 to 15 months was typical. Only 2 of the 15 cases involved implementation periods in excess of 15 months (Japan liquor taxes and India balance-of-payments). In rulings against the United States, the implementation period was 6 months on average, with none longer than 15 months.

USTR officials said that several factors affect the dispute settlement system's timeliness. For example, cases are slowed down by the unavailability of panelists and the need for translation of documents. In addition, on occasion the complainants themselves seek additional time to prepare their cases.

## Transparency of WTO Proceedings

WTO dispute settlement decisions can have far-reaching effects, but information about and input into WTO proceedings is limited. The WTO dispute settlement system was established as a forum to resolve disputes between WTO member governments. Governmental parties to the dispute have certain rights, including the right to be heard, to receive and submit documents at prescribed intervals, to comment on draft panel reports, and to appeal panel decisions. However, unless they are recognized third parties in the case, other WTO members have no rights to participate in proceedings or to submit or receive documents, nor do other international organizations, nongovernmental organizations, local governments, and private persons. Members generally do not make their submissions to panels and the Appellate Body public, outside parties cannot observe or participate in proceedings, and transcripts are not prepared or made publicly available. Numerous U.S. officials, legal experts, business representatives, and interest groups say the secrecy that attends WTO dispute settlement proceedings undermines its legitimacy.

Some progress has been made in opening the system. As a result of a 1996 WTO decision, panel and Appellate Body reports are now released to the

public immediately upon release to all WTO members. In several recent cases, key submissions of arguments by each party have been released to the public by mutual agreement among the parties to the dispute. Outside counsel are now permitted to attend WTO proceedings if they are made part of a disputing parties' delegation by that government. Moreover, in the shrimp-turtle case, the WTO Appellate Body decided that dispute settlement panels had the authority to consider the submission of amicus curiae or "friend of the court" legal briefs even if the briefs were not requested by the panel. In the recent WTO decision involving lead bar from the United Kingdom, the Appellate Body stated that individuals and organizations have no legal right to make submissions or to be heard by the Appellate Body but found that the Appellate Body has the legal authority to accept and consider amicus curiae briefs.

The United States has proposed additional steps at the WTO to improve transparency and has done some things on its own to give affected U.S. interests indirect access to the dispute settlement process. The Uruguay Round Agreements Act set forth procedural requirements to foster transparency and consultation with domestic stakeholders during WTO dispute settlement proceedings, including statutory trade advisory committees.<sup>33</sup> Recently, USTR instituted the practice of publishing a *Federal Register* notice whenever it initiates or is subject to WTO consultations, providing an opportunity for public input at an earlier stage. The commercial and public interest groups we consulted felt that full and timely consultation with domestic stakeholders was critical to effective U.S. participation in WTO dispute settlement. The U.S. government was praised for taking steps to improve public participation and domestic consultations, but some said formal and informal mechanisms still need improvement. For example, several nongovernmental organizations said the statutory trade advisory mechanism as currently structured does not fully represent all the U.S. interests that could be affected by WTO decisions and that wider consultation prior to initiating cases was desirable. Within the WTO, the United States has proposed opening up panel proceedings to observation by outside parties, making legal briefs

<sup>33</sup>19 U.S.C. §§ 3533, 3537. These include requirements for USTR to (1) consult with appropriate congressional Committees (defined in the law as the House Ways and Means and Senate Finance Committees), the petitioner, and relevant formal private sector advisory committees; (2) consider the views of interested private sector and nongovernmental organizations; and (3) publish a *Federal Register* notice soliciting public comments whenever the United States requests or receives a request for establishment of a WTO dispute settlement panel or is subject to an adverse dispute settlement ruling.



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and other panel submissions public, permitting submission of amicus curiae briefs, and obtaining earlier public release of panel reports. USTR is also seeking more timely compliance with a WTO requirement for parties to provide nonconfidential summaries of submissions upon request.

However, the United States faces outright opposition or limited support from most other WTO members to opening the WTO dispute settlement process further. At the root of this resistance is disagreement among WTO members over whether the dispute settlement process is an adjudicative one, where court-like transparency protections may be appropriate, or an intergovernmental conciliation mechanism, where confidential discussions are more typical. WTO members also disagree on the merits of greater openness in fostering full and impartial consideration of relevant issues. Many members say the WTO should retain its character as a strictly government-to-government forum and warn that there is a danger of overloading the system and subjecting it to interest group pressures more appropriately channeled through members' own domestic political mechanisms. There is also some concern that allowing outside participants may give developed countries an advantage over less developed countries, given their greater resources.

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## Agency Comments and Our Evaluation

We obtained oral comments on a draft of this report from the Assistant USTR for Monitoring and Enforcement, who also included comments from USTR's Offices of General Counsel, WTO and Multilateral Affairs, and the Chief Economist. USTR officials generally agreed with the information in the report and provided technical comments that we incorporated as appropriate.

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We are sending copies of this report to appropriate congressional committees. We are also sending copies of this report to the Honorable Charlene Barshefsky, U.S. Trade Representative. Copies will be made available to others upon request.

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If you or your staff have any questions about this report, please contact me on (202) 512-4128. Another GAO contact and staff acknowledgments are listed in appendix IV.

Sincerely yours,

*Susan S. Westin*

Susan S. Westin, Associate Director  
International Relations and Trade Issues

# Summaries of 42 World Trade Organization Dispute Settlement Cases

The United States has been involved in 42 dispute settlement cases that have reached a conclusion from the World Trade Organization's (WTO) inception in 1995 through March 16, 2000, according to the U.S. Trade Representative (USTR). All the cases began with a request by a WTO member for consultations about an alleged violation of WTO obligations as set forth in the WTO agreements or accession documents. The cases then followed different paths through the dispute settlement system. Some were resolved before formal consultations took place. About half of the cases went to a WTO panel for adjudication. Table 1 lists the cases in chronological order. It is followed by a brief summary of each case that includes information on the case's outcome, major issues, resolution, and actions taken to comply with panel rulings.

**Table 1: Completed WTO Dispute Settlement Cases Involving the United States, 1995 Through March 16, 2000**

GAO case number	Case name	WTO dispute number <sup>a</sup>	Date of request for consultation
1	U.S. regulations affecting gasoline imports	DS-2	01/24/95
2	Korea's agricultural shelf-life standards	DS-5	05/03/95
3	U.S. import duties on automobiles from Japan	DS-6	05/17/95
4	Japan's taxes on distilled spirits	DS-11	07/07/95
5	European Union grain tariffs	DS-13	07/19/95
6	European Union banana import regime	DS-16	09/28/95
7	U.S. underwear import restraint	DS-24	12/22/95
8	European Union ban on meat from hormone-treated animals	DS-26	01/26/96
9	Japan sound recordings	DS-28	02/09/96
10	Canada's measures on magazines	DS-31	03/11/96
11	U.S. wool coat import restraint	DS-32	03/14/96
12	U.S. wool shirt import restraint	DS-33	03/14/96
13	Hungary's agricultural export subsidies	DS-35	03/27/96
14	Pakistan patent mailbox provision	DS-36	04/30/96
15	Portugal patent protection	DS-37	04/30/96
16	U.S. Helms-Burton Act	DS-38	05/03/96
17	U.S. tariff retaliation on European Union products	DS-39	04/17/96
18	Turkey's taxation of foreign films	DS-43	06/12/96
19	Japan's import measures affecting film	DS-44	06/13/96
20	U.S. antidumping <sup>b</sup> investigation on Mexican tomatoes	DS-49	07/01/96
21	India patent mailbox provision	DS-50	07/02/96
22	Brazil's automobile regime	DS-52	08/09/96

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(Continued From Previous Page)

<b>GAO case number</b>	<b>Case name</b>	<b>WTO dispute number<sup>a</sup></b>	<b>Date of request for consultation</b>
23	Argentina duties on textiles, apparel, and footwear	DS-56	10/04/96
24	Australia automotive leather export subsidies	DS-57	10/07/96
25	U.S. ban on shrimp imports to protect turtles	DS-58	10/08/96
26	Indonesia automobile and auto parts measures	DS-59	10/08/96
27	European Union customs classification of computer equipment	DS-62	11/08/96
28	U.S. antidumping order on urea	DS-63	11/28/96
29	Philippines pork and poultry tariff-rate quotas <sup>c</sup>	DS-74	04/01/97
30	Japan's measures affecting fruit imports	DS-76	04/07/97
31	U.S. textiles and apparel rules of origin	DS-85	05/22/97
32	Korea's taxes on distilled spirits	DS-84	05/23/97
33	Sweden's civil procedures for intellectual property	DS-86	05/28/97
34	U.S. antidumping order on color television receivers	DS-89	07/10/97
35	India's quantitative import restrictions	DS-90	07/15/97
36	U.S. antidumping order on Korean semiconductors	DS-99	08/14/97
37	U.S. ban on imports of European poultry	DS-100	08/18/97
38	Mexico's antidumping determination on high fructose corn syrup	DS-101	09/04/97
39	Canada dairy subsidies and quotas	DS-103	10/08/97
40	U.S. tax treatment for foreign sales corporations	DS-108	11/18/97
41	U.S. imports of Canadian cattle, swine, and grain	DS-144	09/25/98
42	Provisions of the U.S. Trade Act of 1974	DS-152	11/25/98

<sup>a</sup>The WTO's internet site, [www.wto.org](http://www.wto.org), maintains official records on all dispute settlement cases. The site can be used to search for information on these cases using the WTO's case identification number, which is included in this column.

<sup>b</sup>Antidumping duties are imposed on imports to neutralize the injurious effect of unfair pricing practices known as "dumping."

<sup>c</sup>A tariff-rate quota is the application of a lower tariff rate for a specified quantity of imported goods. Imports above this specified quantity face a higher tariff rate.

Source: GAO analysis.

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## Case 1: U.S. Regulations Affecting Gasoline Imports

### Parties

Plaintiffs: Venezuela, Brazil  
Defendant: United States

### Outcome

- Both the WTO panel and the Appellate Body ruled against the United States. The United States then modified its regulations to come into compliance with the ruling.

### Major Case Issues

- U.S. regulations implementing 1990 Clean Air Act amendments were challenged in the WTO as disadvantageous to foreign suppliers in contravention of WTO rules. Venezuela and Brazil said that several aspects of a U.S. rule involving the cleanliness of gasoline were discriminatory, particularly the fact that foreign suppliers were assigned a statutory baseline whereas domestic suppliers had individual baselines based on their refineries' own performance in 1990. Venezuela and Brazil said the rule was not necessary because the United States had less trade-restrictive means to achieve its objectives.
- The U.S. government recognized that foreign and domestic products were not treated identically but argued that the treatment qualified for WTO exceptions because it was necessary to protect human, animal, and plant health and related to conservation of a natural resource, clean air. The United States argued that alternatives to the measure were impractical because of unavailability of data, enforcement problems, and the possibility of adverse environmental consequences.

### Case Resolution

- The panel found that the less favorable aspects of the gasoline rule were not necessary and not directly related to improving U.S. air quality, and thus could not be justified.
- The United States appealed the panel ruling, stating that the panel's legal interpretation of the WTO exception for conservation was inappropriately narrow. The Appellate Body agreed with the United States on this important point of principle; however, it found the U.S. measure was applied in an unjustifiably discriminatory manner and constituted a disguised restriction on trade. Specifically, it found that

the U.S. government had not sought to overcome administrative problems with allowing foreign refiners to establish individual baselines and had only considered the adjustment costs for domestic, rather than foreign, refiners.

Actions Taken to Comply

- The Environmental Protection Agency revised its regulations on conventional gasoline, which now permit but do not require foreign refiners to apply for an individual baseline.
- The agency imposed enforcement requirements and established a mechanism to ensure that the overall cleanliness of gasoline imports does not deteriorate.

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## Case 2: Korea's Agricultural Shelf-Life Standards

### Parties

Plaintiff: United States  
Defendant: Korea

### Outcome

- Korea and the United States resolved the dispute prior to a WTO panel proceeding. Korea agreed to modify its shelf-life regime.

### Major Case Issues

- In May 1995, the United States filed a WTO complaint, stating that Korea's shelf-life requirements, including the 30-day shelf-life requirement for frozen, heat-treated meats was based on unscientific principles and inconsistent with WTO rules. The United States further claimed that the shelf-life of food products should be determined by the manufacturers, as it is in most countries.
- In February 1994, Korea had reclassified imports of U.S. frozen, heat-treated products, reducing the allowable shelf-life of these products from 90 to 30 days. In effect, Korean shelf-life requirements set such short time frames that many longer-lived food imports could not be marketed in Korea. For example, the requirements essentially eliminated imports of U.S. sausages, since the 30-day shelf-life was about equal to the time it took for these products to clear port inspections.
- Korea claimed its action was necessary to protect public health.

### Case Resolution

- In July 1995, the United States and Korea informed the WTO that they had reached a mutually acceptable agreement resolving the dispute. Korea agreed to change its import regime to allow manufacturers of various products to determine their shelf-life.

### Actions Taken to Comply

- No action required.

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### Case 3: U.S. Import Duties on Automobiles From Japan

#### Parties

Plaintiff: Japan

Defendant: United States

#### Outcome

- The United States and Japan resolved this dispute by negotiating a trade agreement. As a result of the agreement, the United States withdrew its threat of punitive import duties, and Japan did not pursue its WTO case.

#### Major Case Issues

- Japan requested consultations after the United States threatened to impose unilateral punitive import duties on \$5.9 billion in annual U.S. imports of automobiles from Japan. The U.S. action followed an affirmative determination under section 301 of the U.S. Trade Act of 1974.<sup>1</sup> Japan maintained that the U.S. measures violated WTO obligations regarding nondiscrimination among trading partners and nonimposition of customs duties exceeding those in the U.S. Schedule of Concessions. Japan also argued that the measures were inconsistent with the Dispute Settlement Understanding, which prohibits unilateral action to resolve disputes over trade under covered agreements.
- The United States countered that its action was warranted because it was apparent after 20 months of talks that Japan would not take steps to allow real market access in a sector accounting for nearly 25 percent of the U.S. global trade deficit. Among other things, the United States asserted that Japanese restrictions channeled most repair work to Japanese government-certified garages that used few foreign parts, limited the development of other garages more likely to carry foreign parts, and constrained opportunities for U.S. automotive accessory suppliers.

#### Case Resolution

- Prior to the formation of a dispute settlement panel, the United States and Japan reached a bilateral agreement on measures to deregulate the

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<sup>1</sup>Section 301 addresses foreign unfair trade practices affecting U.S. exports of goods or services, and intellectual property protection.



replacement parts and accessories market in Japan. The agreement's objectives were the significant expansion of sales opportunities and purchases of foreign parts by Japanese firms and their U.S.-based production facilities, the removal of problems that affect market access, and the encouragement of imports of foreign autos and auto parts in Japan.

- On the basis of the agreement, the United States terminated the section 301 investigation and began monitoring compliance with the agreement.
- Japan did not pursue establishment of a dispute settlement panel.

Actions Taken to Comply

- No action required.

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## Case 4: Japan's Taxes on Distilled Spirits

### Parties

Plaintiff: United States

Defendant: Japan

### Outcome

- Both the WTO panel and the Appellate Body ruled against Japan, which subsequently equalized its taxes.

### Major Case Issues

- The United States complained that Japan imposed different levels of internal taxes on shochu (a type of alcohol) and other distilled spirits and liquors under its Liquor Tax Law. The United States considered the lower tax rate accorded to shochu to violate the WTO principle of national treatment (that foreign goods should not be taxed less favorably than domestic goods) for vodka, rum, gin, whisky, and brandy.
- Japan claimed that these alcohol products did not directly compete with shochu and thus its Liquor Tax Law did not violate the principle of national treatment.

### Case Resolution

- The WTO panel and the Appellate Body ruled that Japan's Liquor Tax Law violated the WTO national treatment principle because shochu and vodka are like products, and other alcohols were directly competitive or substitutable products. Therefore, both bodies recommended that Japan should bring its Liquor Tax Law into conformity with its national treatment obligations under the 1994 General Agreement on Tariffs and Trade.

### Actions Taken to Comply

- After the Appellate Body ruling, the United States requested arbitration on Japan's compliance period. The United States sought 5 months (from the adoption of the ruling); Japan countered with 23 months. The arbitrator decided to give Japan 15 months to comply.
- Japan and the United States reached an agreement after the arbitration that allowed Japan more time to implement the decision in exchange for lower tariffs on various liquor products. Japan has begun lowering its

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tariffs and phasing in the changes to its tax law. It will complete these actions in 2002.

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## Case 5: European Union Grain Tariffs

### Parties

Plaintiff: United States

Defendant: European Union

### Outcome

- The United States successfully used the WTO dispute settlement consultation process as a vehicle to get the European Union (EU) to improve market access for U.S. grain exports.

### Major Case Issues

- In July 1995, the United States requested consultations in a matter involving implementation of a U.S.-EU agreement providing for a maximum duty (ceiling) to be paid on most imported grain. The United States expected the EU to apply a consignment-by-consignment method to determine the duty owed, but the EU believed that such an approach was impractical. The bilateral agreement had been reached during the Uruguay Round negotiations and incorporated into the EU's WTO tariff schedule, but the parties disagreed about how the duties would be assessed, delaying implementation.

### Case Resolution

- The United States and the EU reached an understanding in December 1995 that provided for a maximum duty to be paid on most imported grain based on a representative price system instead of the consignment-by-consignment method. This approach entailed assessment of duties based on the margin between a reference price (derived from the average international market price for that particular grain variety over a 2-week period) and the duty ceiling for that grain variety.
- The EU also agreed to provide a special duty rebate for parboiled brown rice, and a tariff-rate quota (TRQ) for malting barley.

### Actions Taken to Comply

- After the December 1995 settlement, the United States renewed its request for a panel based on the EU's failure to implement the settlement terms. After additional negotiations, the EU implemented the

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settlement in 1997 by passing legislation creating the tariff-rate quota for malting barley, the duty rebate for parboiled brown rice, and subsequently the 8 percent reduction on the tariff for parboiled brown rice.

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## Case 6: European Union Banana Import Regime

### Parties

Plaintiffs: United States and others<sup>2</sup>  
Defendant: European Union

### Outcome

- Both the WTO panel and the Appellate Body ruled against the EU. Further, a compliance panel also ruled that the EU had failed to comply with the rulings. The WTO authorized retaliation.

### Major Case Issues

- The United States and four Latin American countries complained that the 1993 EU regime for importing bananas was inconsistent with WTO rules. The regime provided a duty-free quota to bananas from former colonies of some EU members, while imports from Latin America were subject to a restrictive TRQ. The system also shifted marketing of bananas from U.S. and other non-EU firms to favor EU firms.
- The EU argued that the 1993 regime was required to integrate a complex system of national regulations and establish a common market for bananas, while meeting EU commitments to former colonies.

### Case Resolution

- Both the WTO panel and the Appellate Body ruled that the EU's banana regime violated WTO rules that resulted in (1) distribution of import licenses to EU firms, taking away U.S. companies' business; (2) imposition of burdensome licensing requirements for banana imports from Latin America; and (3) discriminatory allocation of access to the EU market, restricting Latin American bananas while not similarly limiting bananas from former colonies.
- In response, the EU enacted a revised banana regime in 1999. The original five countries plus Panama then argued that the revised EU banana regime was virtually the same as the 1993 WTO-inconsistent regime.

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<sup>2</sup>Co-complainants were Guatemala, Honduras, Mexico, and Ecuador.

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- The WTO arbitrators agreed with the complainants and rejected the EU's position that the revised regime fulfilled its obligation in conformity with the WTO panel ruling.

**Actions Taken to Comply**

- The WTO authorized the United States to suspend concessions covering trade in an amount of \$191.4 million, equal to the harm done to U.S. economic interests.

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## Case 7: U.S. Underwear Import Restraint

### Parties

Plaintiff: Costa Rica

Defendant: United States

### Outcome

- Both the WTO panel and the Appellate Body ruled against the United States, and the United States allowed the import restraint to expire.

### Major Case Issues

- After failed consultations with Costa Rica under the WTO Agreement on Textiles and Clothing (ATC), the United States imposed a quantitative restraint on imports of cotton and manmade fiber underwear from Costa Rica, claiming serious damage, or actual threat thereof, under the ATC.
- Subsequently, although the ATC's Textile Monitoring Body<sup>3</sup> did not find serious damage, it failed to reach consensus on whether there was an actual threat of serious damage. Costa Rica requested a dispute settlement panel, claiming that the U.S. quantitative restriction was inconsistent with the ATC and should be withdrawn. Costa Rica also claimed that the United States had acted inconsistently with the ATC by backdating the quantitative restraint.

### Case Resolution

- The panel ruled that the United States had violated the ATC by imposing a restriction on Costa Rican imports without having demonstrated that they had caused or threatened serious damage to U.S. industry. The panel also ruled that the United States had violated the ATC by setting the restraint period starting on the date of the request for consultations—March 22, 1995—rather than on the date of the publication in the *Federal Register* of that information—April 21, 1995.
- Costa Rica appealed the portion of the panel finding that allowed the United States to backdate its restraint to the date of publication. The United States argued that authority to backdate a restraint was essential

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<sup>3</sup>Among other things, the Textile Monitoring Body was established to supervise implementation of the ATC.



to allow an importing member to protect itself from speculative import surges.

- The Appellate Body overruled the WTO panel and found that giving retroactive effect to a safeguard restraint is not permitted by the ATC. The Appellate Body did point out, however, that when a flood of imports becomes a real and serious problem, members can act under a provision of the ATC that authorizes immediate application of a restraint in highly unusual and critical circumstances.

Actions Taken to Comply

- The United States allowed the import restraint to expire.

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## Case 8: European Union Ban on Meat From Hormone-Treated Animals

### Parties

Plaintiff: United States

Defendant: European Union

### Outcome

- Both the WTO panel and the Appellate Body found the EU in violation of WTO obligations. The United States was authorized to suspend concessions to the EU when the EU was found not to have complied with the rulings.

### Major Case Issues

- The United States claimed that a ban on the importation and sale of animals and meat derived from animals that had been treated with any of six specific growth hormones, was inconsistent with several aspects of the WTO Agreement on the Application of Sanitary and Phytosanitary (human, animal, and plant health) Measures. The United States argued in part that the measures were not based on an assessment of risk, were more trade restrictive than required to protect human life or health, were not based on scientific principles, and were maintained without sufficient scientific evidence.
- The EU argued that its measures satisfied all conditions imposed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

### Case Resolution

- The panel and Appellate Body both found that the EU measures were inconsistent with the agreement.
- However, the Appellate Body overruled the panel on certain substantive and procedural issues. For example, the Appellate Body overturned the panel by concluding that a member need not demonstrate that it actually took into account a risk assessment when it enacted or maintained the measure. The Appellate Body also modified the Panel's interpretation by finding that a member must be able to both cite a risk assessment relating to the sanitary/phytosanitary measure it had adopted and to demonstrate that the results of the risk assessment sufficiently warrant or reasonably support the sanitary/phytosanitary measure at stake. It

went on to state that the agreement does not require the risk assessment to embody only the view of a majority of the scientific community.

- Neither the WTO panel nor the Appellate Body made a direct finding on the U.S. argument regarding whether the EU measures were based on scientific principles and maintained without sufficient scientific evidence. Rather, they found the measure was not based on a risk assessment.

#### Actions Taken to Comply

- The United States and the EU disagreed about what steps the EU could take to comply with the ruling. Ultimately, the WTO authorized suspension of U.S. trade concessions to the EU in the amount of \$116.8 million per year.

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## Case 9: Japan Sound Recordings

### Parties

Plaintiff: United States

Defendant: Japan

### Outcome

- Japan and the United States reached a mutually satisfactory agreement prior to a panel decision whereby Japan amended its copyright protection to grant 50 years' protection for sound recordings.

### Major Case Issues

- The United States argued that Japan's copyright law did not adequately protect sound recordings as required by the Agreement on Trade-Related Aspects of Intellectual Property Rights. The United States argued that the agreement requires countries to protect sound recordings for 50 years from the date of the copyright or when the performance took place and that this protection should be applied retroactively to pre-existing recordings. At the time the case was brought, this would have protected recordings going back to 1946. Japan's copyright law only protected recordings produced after January 1, 1971, when Japan first implemented a law enforcing copyright protection.
- Japan argued that the agreement allows WTO members to determine their own level of retroactive protection and that since Japan did not provide retroactive protection beyond 1971 for its own copyright holders, it did not have to do so for foreign copyright holders.

### Case Resolution

- The United States and Japan reached a negotiated agreement and terminated consultations. In the agreement, Japan indicated that it had amended Japanese copyright law to extend protection for sound recordings for at least 50 years.
- Japan also agreed to extend that protection to existing recordings that had not already enjoyed a 50-year term of protection in the country of origin or in the country in which protection was sought.

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**Actions Taken to Comply**

- Japan passed legislation changing domestic copyright laws to protect existing sound recordings going back 50 years instead of only providing protection to existing recordings produced after January 1, 1971.

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## Case 10: Canada's Measures on Magazines

### Parties

Plaintiff: United States

Defendant: Canada

### Outcome

- Both the WTO panel and the Appellate Body ruled against Canada.

### Major Case Issues

- The United States complained that Canada maintained several measures that prohibited import of certain periodicals to Canada, imposed an 80-percent excise tax on certain "split-run"<sup>4</sup> periodicals, and applied favorable postal rates to certain Canadian periodicals. The United States argued that these measures were in conflict with WTO prohibitions against quantitative restrictions on imports and with Canada's national treatment obligations.
- Canada argued that its import prohibition on magazines was a justifiable exception to the GATT's prohibition on quantitative restrictions, that its excise tax affecting trade in services was not subject to GATT nondiscrimination requirements, and that its postal subsidy rates were either not covered by GATT or were allowable.

### Case Resolution

- The WTO panel found that Canada's import ban was not justified as an exception under other WTO provisions and violated WTO provisions on quantitative restrictions. It also found that Canada's excise tax violated national treatment because it resulted in different rates of internal tax that disadvantaged imports. However, it found Canada's postal subsidy to be exempt from national treatment requirements under a provision in GATT 1994.
- The Appellate Body upheld the panel's findings on the excise tax but reversed the panel's ruling on the postal subsidy, finding it to violate national treatment rules.

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<sup>4</sup>Split-run periodicals are periodicals sold both in Canada and abroad in which Canadian editions contain advertisements for a Canadian audience.

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Actions Taken to Comply

- Canada complied with the WTO panel ruling by repealing its import ban on split-runs, discontinuing the excise tax, eliminating discriminatory postal rates, and modifying postal subsidies. However, Canada introduced legislation shortly before taking these measures that would have prohibited U.S. and other non-Canadian publishing companies from advertising directly to Canadian readers in magazines they produce. Under a U.S. threat of sanctions under the North American Free Trade Agreement (NAFTA), the two countries entered into a bilateral agreement requiring concessions by Canada in exchange for a U.S. agreement not to challenge the Canadian measures under WTO, NAFTA, or section 301 of the 1974 Trade Act. The proposed legislation was modified before being enacted.

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## Case 11: U.S. Wool Coat Import Restraint

### Parties

Plaintiff: India

Defendant: United States

### Outcome

- The case was resolved when the United States agreed to remove the import restraint and India agreed to withdraw its request for a WTO panel.

### Major Case Issues

- Pursuant to the WTO Agreement on Textiles and Clothing, the United States requested consultations with India on its exports of women's and girls' wool coats, claiming serious damage to U.S. industry or actual threat thereof. India disagreed, and on July 14, 1995, the United States imposed an import restraint on these imports from India, effective retrospectively from April 18, 1995.
- The Textile Monitoring Body reviewed the case and found that serious damage had not been demonstrated but could not reach consensus on the actual threat of serious damage. In a second report, the body could not decide whether the restraint could continue because of the absence of consensus on the existence of an actual threat of serious damage.
- India requested a WTO panel, complaining that the restraint was inconsistent with the WTO Agreement on Textiles and Clothing.

### Case Resolution

- The United States agreed to remove its import restraint and India then terminated further dispute settlement action.

### Actions Taken to Comply

- No action required.



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## Case 12: U.S. Wool Shirt Import Restraint

### Parties

Plaintiff: India

Defendant: United States

### Outcome

- Both the WTO panel and the Appellate Body ruled that the U.S. import restraint was improper but agreed that India had the burden of proof in the case. The United States had already withdrawn the restraint prior to the rulings.

### Major Case Issues

- India complained that an import restraint the United States had placed on imports of woven wool shirts and blouses from India was inconsistent with the ATC. India argued that the burden of demonstrating serious damage or the actual threat thereof was on the United States, the importing member that had imposed the restraint.
- During consultations and the panel process, the United States asserted that imports of Indian woven wool shirts and blouses were causing serious damage or the actual threat thereof to U.S. industry. The Textile Monitoring Body had reviewed the case and found that the actual threat of serious damage had been demonstrated, and that this threat could be attributed to imports from India.

### Case Resolution

- The panel concluded that the U.S. import restraint violated provisions of the ATC because the United States had not shown serious damage or the actual threat thereof to U.S. industry from the import of India woven wool shirts and blouses. The panel also found that the burden was on India, the party initiating the panel proceedings, to establish that the U.S. restraint was inconsistent with the ATC.
- India appealed the burden of proof issue, and the Appellate Body affirmed the panel finding, concluding that India had the burden to establish a presumption that the U.S. restraint determination was inconsistent with the ATC. The United States then had the burden of rebutting this presumption.

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Actions Taken to Comply

- The United States withdrew the import restraint prior to the panel and Appellate Body ruling due to a steady decline in imports of the Indian products in question.

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## Case 13: Hungary's Agricultural Export Subsidies

### Parties

Plaintiffs: United States and others<sup>5</sup>

Defendant: Hungary

### Outcome

- Hungary agreed to change its agricultural export subsidy practices. The WTO granted Hungary a temporary waiver so that it could come into compliance.

### Major Case Issues

- The complaining parties argued that the level of export subsidies provided by the government of Hungary for certain agricultural commodities exceeded its commitment under GATT 1994.
- Hungary maintained that a mistake was made in compiling the data used to calculate its commitment to reduce subsidies. Hungarian authorities argued that if subsidy reductions were undertaken at the levels required, the country's agricultural sector would be seriously damaged.

### Case Resolution

- In July 1997, an agreement was reached between Hungary and the complaining countries. Hungary agreed to comply with its original export subsidy schedule in exchange for a temporary waiver that gives it a longer transition period to reduce its export subsidies for certain agricultural commodities.
- The agreement requires Hungary to cut its export subsidy levels by more than 65 percent. Hungary will replace these subsidies with domestic support measures, consistent with its WTO obligations.

### Actions Taken to Comply

- In December 1997, the Hungarian government published a new export subsidy regime. Hungary has also undertaken a shift from exporter subsidies to domestic support.

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<sup>5</sup>Co-complainants were Argentina, Australia, Canada, Japan, New Zealand, and Thailand.

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## Case 14: Pakistan Patent Mailbox Provision

### Parties

Plaintiff: United States

Defendant: Pakistan

### Outcome

- The United States and Pakistan reached an agreement prior to a panel decision whereby Pakistan agreed to come into compliance with WTO intellectual property provisions.

### Major Case Issues

- The United States complained that Pakistan had neither made patent protection available for pharmaceutical and agricultural chemical inventions nor established a system, called a "mailbox,"<sup>6</sup> for filing patent applications for these inventions, as required by the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). The United States also argued that Pakistan had failed to establish a system to provide patent applicants with exclusive marketing rights for their products as required by the agreement.
- Pakistan responded that its parliament was considering amending its patent law to include mailbox provisions.

### Case Resolution

- The United States and Pakistan negotiated a mutually agreed solution to the dispute, in which Pakistan stated that it had taken action to come into compliance with TRIPS.

### Actions Taken to Comply

- Pakistan's President issued an ordinance to provide a system for submitting patent applications and for granting exclusive marketing rights to the patent applicant, in accordance with TRIPS.

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<sup>6</sup>The mailbox system preserves the novelty and priority of inventions while the applicant waits for a patent.

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## Case 15: Portugal Patent Protection

### Parties

Plaintiff: United States

Defendant: Portugal

### Outcome

- Portugal amended its patent law to comply with WTO obligations.

### Major Case Issues

- The United States complained that the term limit that Portugal granted existing patents under Portuguese law was inconsistent with Portugal's obligations under the WTO TRIPS agreement. TRIPS requires members to grant patent protection for at least 20 years from the date the application is filed. TRIPS also requires developed country members to grant this term to all patents in force as of January 1, 1996, from the date of the application. Portugal had previously amended its patent law to comply with this TRIPS requirement, but the law only applied to future patents.

### Case Resolution

- The United States and Portugal negotiated a mutually agreed solution to their dispute. The agreement stated that Portugal had changed its patent law to confirm that all patents that were already in force on January 1, 1996, and all patents granted after that date that were pending on January 1, 1996, would receive protection for either 15 years from the date of the patent or 20 years from the effective filing date, whichever is longer.

### Actions Taken to Comply

- Portugal passed legislation changing its patent law.

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## Case 16: U.S. Helms-Burton Act

### Parties

Plaintiff: European Union

Defendant: United States

### Outcome

- Resolved through a political understanding between United States and the EU.

### Major Case Issues

- After passage of the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms-Burton Act),<sup>7</sup> the EU requested a panel and complained about several aspects of U.S. trade sanctions against Cuba. With regard to Helms-Burton, the EU complained about titles III and IV, which respectively (1) created a private right of action for U.S. persons or entities against others who have trafficked in property confiscated by the Cuban government and (2) required the Secretary of State to deny U.S. visas and exclude from the United States individuals or officials of firms that had confiscated or trafficked in property owned by a U.S. national.
- The United States argued that the EU assertions involved a foreign policy rather than a trade issue and that the WTO was not the appropriate forum for resolution.

### Case Resolution

- Prior to a panel decision, in 1997 the United States and the EU announced a bilateral, political understanding. The EU agreed to (1) suspend the WTO proceedings, (2) continue its efforts to promote democracy in Cuba, and (3) step up efforts to develop disciplines and principles for strengthening investment protection both bilaterally with the United States and multilaterally. In exchange, the United States pledged to seek authority from Congress to allow the President to waive title IV of Helms-Burton. As part of this understanding, the United States also agreed to work with the EU toward meeting the terms for waivers

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<sup>7</sup>Public Law 104-114, codified at 22 U.S.C. §§ 6021 and following.

under the 1996 Iran and Libya Sanctions Act,<sup>8</sup> though with no commitment to grant such waivers. The understanding also provided that the EU reserved the right to resume panel proceedings if action is taken against EU companies or individuals under titles III or IV of Helms-Burton or if waivers under the Iran and Libya Sanctions Act were not granted.

- In a subsequent 1998 understanding, the United States and the EU agreed that certain described disciplines and principles for strengthening investment protection would apply when the U.S. administration obtains an amendment to waive title IV of Helms-Burton.

#### Actions Taken to Comply

- Legislation authorizing the waiver has not yet been enacted.

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<sup>8</sup>The act, Public Law 104-172, calls for sanctions against persons or entities, including foreign persons or entities, that carry on certain kinds of trade with Iran or Libya.

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## Case 17: Tariff Retaliation on European Union Products

### Parties

Plaintiff: European Union  
Defendant: United States

### Outcome

- The EU withdrew its panel request after the United States dropped the retaliatory duties in question.

### Major Case Issues

- The EU requested a WTO panel to examine U.S. tariff increases on imports from the EU. The duties had been imposed by the United States in 1989 as part of a section 301 determination in retaliation for EU legislation that resulted in a ban on imports of hormone-treated beef after the EU blocked U.S. efforts to submit the matter to dispute settlement under the Tokyo Round Agreement on Technical Barriers to Trade.
- The EU stated that maintenance of the retaliatory duties was inconsistent with U.S. obligations under GATT and the WTO dispute settlement understanding.

### Case Resolution

- The United States requested its own WTO dispute settlement panel to examine the consistency of the EU's hormone ban with WTO obligations. The United States withdrew the retaliatory duties after this panel was established.
- The EU then withdrew its complaint.

### Actions Taken to Comply

- No action required.



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## Case 18: Turkey's Taxation of Foreign Films

### Parties

Plaintiff: United States

Defendant: Turkey

### Outcome

- The case was settled before reaching a WTO panel.

### Major Case Issues

- The United States complained that Turkey imposed a 25-percent municipality tax on box office receipts generated from the showing of foreign-origin films but did not apply the tax to domestic films. The United States considered this tax a violation of the WTO principle of national treatment (that foreign goods should not be taxed less favorably than domestic goods).

### Case Resolution

- The case was settled before WTO panel deliberations began. Turkey agreed to equalize taxes imposed on box office receipts from the showing of domestic and imported films. As a result, the United States and Turkey agreed to formally terminate consultations, and the United States withdrew the matter from WTO consideration.

### Actions Taken to Comply

- Turkey equalized the applicable taxes in December 1997.

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## Case 19: Japan's Import Measures Affecting Film

### Parties

Plaintiff: United States

Defendant: Japan

### Outcome

- The WTO panel ruled against the United States, which did not appeal the decision.

### Major Case Issues

- The United States complained that the government of Japan had implemented measures affecting the distribution and sale of consumer photographic film and paper that denied the United States the benefits of tariff concessions Japan had made, afforded protection to domestic production, and accorded less favorable treatment to imported film and paper than to comparable products of national origin. In addition, the United States claimed the measures lacked transparency (openness) and were not administered in a uniform, impartial manner.
- The United States further asserted that the measures (1) closed traditional distribution channels to foreign manufacturers, (2) restricted alternative channels of distribution, and (3) restricted the ability of foreign firms to use sales promotions to break into the market or expand their market presence.
- Japan denied all the U.S. claims, stating that its market for film was open and that there were no government distribution or promotion measures that afforded protection to domestic industry or disadvantaged foreign suppliers.

Case Resolution

- The panel concluded that the United States had not provided sufficient evidence to support its claims against the government of Japan. Specifically, the panel found that the United States did not prove that (1) the Japanese measures individually or collectively nullified or impaired tariff benefits accruing to the United States, (2) the Japanese measures accorded less favorable treatment to imported photographic film and paper than to domestic film and paper, and (3) Japan failed to publish administrative rulings of general application and thereby violated WTO requirements for transparency and impartial administration.<sup>9</sup>

Actions Taken to Comply

- No action required.

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<sup>9</sup>After the panel ruling, USTR and the U.S. Department of Commerce announced an initiative to (1) review implementation of formal representations made by Japan before the WTO dispute settlement panel regarding the openness of its market to foreign film and its lack of tolerance of restrictive business practices, (2) collect and assess data on penetration by foreign film in Japan's distribution channels and retail stores, and (3) issue a report on a semi-annual basis.

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**Case 20: U.S.  
Antidumping  
Investigation on  
Mexican Tomatoes**

Parties

Plaintiff: Mexico  
Defendant: United States

Outcome

- The case was resolved outside of WTO dispute settlement due to an agreement between Mexican tomato growers and the Department of Commerce. A WTO dispute settlement panel was not established.

Major Case Issues

- Mexico requested consultations regarding the U.S. initiation of an antidumping investigation on fresh and refrigerated Mexican tomatoes. Commerce issued a preliminary determination that would have imposed antidumping duties of 17.56 percent on most Mexican tomatoes.

Case Resolution

- After the preliminary antidumping determination was announced, Commerce and the Mexican tomato growers signed a suspension agreement. The agreement, which eliminates injury through the establishment of a predetermined floor price for imported Mexican tomatoes, means the preliminary antidumping order will not take effect and no future antidumping duties will be assessed as long as the floor price is met. Following the agreement, Mexico did not pursue its WTO matter further.

Actions Taken to Comply

- No action required.

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## Case 21: India Patent Mailbox Provision

### Parties

Plaintiff: United States

Defendant: India

### Outcome

- Both the WTO panel and the Appellate Body ruled against India. India amended its Patent Act to come into compliance with the WTO rulings.

### Major Case Issues

- The United States complained that India neither provided patent protection for pharmaceutical and agricultural chemical products nor established a formal system, called a "mailbox," for filing patent applications for these products, as required by TRIPS. The United States also argued that India had failed to establish a system to provide patent applicants with exclusive marketing rights for their products.
- India argued that the TRIPS Agreement allowed members to determine the appropriate method of implementing the agreement and that since India had effectively implemented the mailbox requirement through "administrative action," legislation was not needed. India also argued that the transitional arrangements in TRIPS allowed it to postpone legislation establishing a system to provide patent applicants with exclusive marketing rights for their products.

### Case Resolution

- The Appellate Body agreed with the panel ruling that India had not complied with its obligations under TRIPS to establish a means for the filing of mailbox applications for patents. The Appellate Body rejected India's claim that it fulfilled its obligation through administrative action and also agreed with the panel that India should have had a mechanism in place to provide for the grant of exclusive marketing rights for those inventions, effective from the date of entry into force of the WTO Agreement.

### Actions Taken to Comply

- India approved amendments to its Patent Act to conform with TRIPS.

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## Case 22: Brazil's Automobile Regime

### Parties

Plaintiff: United States  
Defendant: Brazil

### Outcome

- Resolved through negotiation without proceeding to a WTO panel. Brazil agreed to eliminate trade- and investment-distorting measures in its auto regime.

### Major Case Issues

- The United States objected to various Brazilian measures that (1) provided for tariff benefits to certain companies located in Japan, South Korea, and the EU; (2) provided benefits to companies that invested in automotive manufacturing in northeastern Brazil; and (3) reduced duties for motor vehicles and parts manufacturers based on compliance with an average domestic content requirement, and trade balancing and local content requirements with regard to inputs. The United States considered these measures to violate several WTO obligations.

### Case Resolution

- The case was settled by agreement between the United States and Brazil. Brazil agreed to eliminate the trade- and investment-distorting measures in its auto regime by December 31, 1999, and not to extend its program to its Mercosur<sup>10</sup> partners when their auto regimes are unified. In addition, Brazil agreed that no applications would be accepted after certain dates for the program, which may have limited the number of companies taking advantage of the special benefits before they were phased out.
- Several days after the agreement, the United States announced that it would terminate its section 301 investigation on this matter.

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<sup>10</sup>Mercosur, the Common Market of the South, was created in 1991 by Argentina, Brazil, Paraguay, and Uruguay.

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**Actions Taken to Comply**

- Brazil eliminated the trade- and investment-distorting measures under this auto regime. The United States is monitoring the development of the auto policies of Mercosur countries, including Brazil.

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**Case 23: Argentina  
Duties on Textiles,  
Apparel, and Footwear**

Parties

Plaintiff: United States

Defendant: Argentina

Outcome

- Both the WTO panel and the Appellate Body ruled against Argentina, which then modified its methods for assessing duties and its statistical tax.<sup>11</sup>

Major Case Issues

- The United States complained that Argentine measures imposing specific duties (imposed per unit) on various textiles, apparel, and footwear in excess of a bound rate of 35 percent ad valorem (percent ad valorem is the percent value of the subject merchandise), were inconsistent with various WTO obligations.
- The United States also complained that Argentina's imposition of a statistical tax of 3 percent ad valorem on these imports from all sources other than Mercosur countries was WTO inconsistent.
- Argentina contended that to the extent the specific duties did not exceed the "ad valorem equivalent" of Argentina's bound rate of 35 percent, they were WTO consistent, as was the statistical tax.

Case Resolution

- The panel ruled that the specific import duties Argentina imposed on textiles and apparel were inconsistent with the requirements of GATT 1994.<sup>12</sup> The panel also ruled that the statistical tax of 3 percent ad valorem imposed by Argentina on imports was inconsistent to the extent that it resulted in charges levied in excess of the costs of services rendered to the specific exporters involved. GATT 1994 requires that these taxes be limited to the approximate cost of services rendered.

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<sup>11</sup>Argentina's statistical tax was intended to cover the cost of providing general export and import statistical services.

<sup>12</sup>The WTO panel did not rule on specific footwear duties because Argentina had revoked the duties and replaced them with safeguard duties.



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- The Appellate Body upheld the panel ruling but found that specific duties could be imposed where there is a bound ad valorem rate so long as the specific duties do not exceed that rate.

**Actions Taken to Comply**

- Argentina complied with the ruling when it took measures to ensure that its specific duties on textiles and apparel did not exceed the equivalent of 35 percent ad valorem and when it stopped charging an ad valorem statistical tax without upper limits and modified the tax to approximate the cost of rendering services to importers.

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## Case 24: Australia Automotive Leather Export Subsidies

### Parties

Plaintiff: United States  
Defendant: Australia

### Outcome

- A WTO panel ruled that Australia improperly provided an export subsidy and recommended that the subsidy be withdrawn.

### Major Case Issues

- The United States brought a case against Australia for improperly providing export subsidies to an Australian automotive leather manufacturer. After initial consultations, Australia agreed to remove the export subsidy but subsequently provided a new package of subsidies—including a loan and a grant package on preferential and non-commercial terms—specifically for this leather manufacturer. The United States then brought a second dispute settlement case against this new measure.
- Australia argued that the loan and grant contracts were not covered by the WTO Subsidies agreement.

### Case Resolution

- The panel ruled that the Australian loan was not an export subsidy under the Subsidies agreement but that the grant was an export subsidy. The panel further recommended that the measure be withdrawn within 90 days.
- Australia agreed to comply, but the United States did not deem its response to be adequate and requested a compliance review. The panel then ruled that Australia had failed to withdraw the prohibited subsidy within the specified 90 day period.

### Actions Taken to Comply

- After the compliance review panel ruling, Australia and the United States mutually agreed to resolve the compliance issue through negotiations. The negotiations concluded with the Australian company agreeing to partially repay the subsidy and Australia agreeing to exclude the industry from current and future subsidy programs.

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## Case 25: U.S. Ban on Shrimp Imports to Protect Turtles

### Parties

Plaintiffs: India, Malaysia, Pakistan, Thailand  
Defendant: United States

### Outcome

- Both the WTO panel and the Appellate Body ruled against the United States. The United States took several steps, including changing its procedural guidelines to comply with the ruling.

### Major Case Issues

- The complainants contested the partial U.S. embargo on the importation of certain shrimp and shrimp products from countries that had not been certified by the Department of State as having a comprehensive sea turtle conservation regime. Notably, they argued that the embargo was not a conservation measure as envisioned under GATT 1994 article XX and that the United States did not have a right to take unilateral measures to protect a resource not in its territory.
- The United States argued that the measure was a justifiable restriction on importation of shrimp under article XX, which, the United States said, contains no express or implied jurisdictional limitations. It further said that the embargo was a permitted conservation measure designed to protect an endangered species (sea turtles), considered to be a shared global resource.

### Case Resolution

- The WTO panel found, in part, that the U.S. measure was not justified under article XX because the measure met the panel's test of being a "risk to the multilateral trading system." The United States appealed the ruling and the test, arguing the panel was impermissibly elevating commercial considerations above those enunciated in article XX.
- The Appellate Body rejected the panel's test and found that the U.S. measure fell within the scope of article XX because it was related to the conservation of an exhaustible natural resource, and a sufficient connection existed between the resource and U.S. interests protected under article XX. However, the Appellate Body also found the U.S. measure did not qualify for an exception because it had been applied in an arbitrary and discriminatory manner.

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**Actions Taken to Comply**

- While restrictions on imports of shrimp from noncertified countries remain in effect, the Department of State revised its guidelines to establish greater transparency and due process in country certification decisions. It also increased U.S. efforts to negotiate international agreements on sea turtle protection, and offered enhanced technical assistance.

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## Case 26: Indonesia Automobile and Auto Parts Measures

### Parties

Plaintiffs: United States, Japan, European Union  
Defendant: Indonesia

### Outcome

- A WTO panel ruled against Indonesia, and Indonesia eliminated its WTO-inconsistent measures.

### Major Case Issues

- The United States complained that Indonesia maintained certain benefits for manufacturers of autos and auto parts in the form of reduced duties on imports and a reduction or elimination of taxes on the sale of motor vehicles. These benefits were conditioned on compliance with domestic and local content requirements and, in some cases, the use of an Indonesian trademark.
- The United States considered these benefits to violate WTO provisions on subsidies, most-favored-nation treatment (that imported goods from different countries should receive equal treatment), national treatment (that imported products should be treated no less favorably than domestic goods), investment measures that distort trade, and intellectual property protection.

### Case Resolution

- The panel ruled that various aspects of Indonesia's auto policies violated WTO provisions on national treatment, most-favored-nation treatment, and investment provisions that distort trade. It also concluded that the subsidies provided under the auto program caused serious prejudice to the European Union and should be withdrawn or modified.

### Actions Taken to Comply

- Indonesia eliminated its measures.

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## Case 27: European Union Customs Classification of Computer Equipment

### Parties

Plaintiff: United States

Defendant: European Union

### Outcome

- The panel ruling supported the EU on one issue and the United States on another. The Appellate Body reversed the panel ruling that was favorable to the United States.

### Major Case Issues

- The United States complained that EU customs authorities had reclassified computer local area network adapter cards and personal computers with multimedia capability into tariff categories with substantially higher tariffs. The United States argued that it was entitled to "legitimate expectations" that the EU would not raise the tariff for network equipment and personal computers above the level specified in the EU tariff schedule and that increases were inconsistent with WTO obligations.
- The EU argued that it had never committed itself nor indicated that it would classify the specified computer equipment in the category expected by the United States. The EU also argued that the United States did not have a legitimate basis to reasonably expect that these products would be provided treatment foreseen under relevant tariff headings of the tariff schedules, because during Uruguay Round negotiations there was no uniform treatment within EU member states for these products.

### Case Resolution

- The panel found that the EU had not acted inconsistently with WTO obligations regarding the tariff treatment of multimedia personal computers. However, the panel also found that the EU's failure to accord imports of local area network equipment from the United States treatment no less favorable than that provided in its tariff schedules was inconsistent with WTO obligations.

- The Appellate Body reversed the panel's ruling with regard to local area network equipment and did not find that the EU had provided the United States with less favorable treatment than required by its tariff schedules for this equipment.
- The Appellate Body reversed the panel's finding that the United States was entitled to "legitimate expectations" that local area network equipment would be accorded the tariff treatment provided to automatic data processing equipment.

Actions Taken to Comply

- No action required, but as part of its commitments under the Information Technology Agreement the EU eliminated tariffs on all local area network equipment.

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**Case 28: U.S.  
Antidumping Order on  
Urea**

Parties

Plaintiff: European Union  
Defendant: United States

Outcome

- The case was resolved by action taken by the Department of Commerce prior to the establishment of a WTO panel.

Major Case Issues

- The EU complained that the Department of Commerce had not completed its changed circumstances review of an antidumping order on imports of urea from the former German Democratic Republic. Urea is a chemical compound used as fertilizer. The EU argued that Commerce should revoke the order because the German Democratic Republic no longer existed.
- In its preliminary changed circumstances determination, Commerce decided that the original order should be applied only to urea imports from the former states of the German Democratic Republic. Commerce, however, had not yet issued its final determination.

Case Resolution

- U.S. laws permit Commerce to revoke an antidumping order if domestic industry no longer has an interest in maintaining the order. In this case, U.S. industry filed a "letter of no further interest" in the urea antidumping order, and Commerce then revoked the order.

Actions Taken to Comply

- No action necessary.



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## Case 29: Philippines Pork and Poultry Tariff-Rate Quotas

### Parties

Plaintiff: United States

Defendant: Philippines

### Outcome

- The United States and the Philippines negotiated a resolution to the dispute prior to a WTO panel decision.

### Major Case Issues

- In its request for consultations, the United States complained that Philippine regulations on administration of its tariff-rate quotas<sup>13</sup> discouraged imports by allocating 85 percent of pork and 99 percent of poultry import licenses to Philippine producers of those commodities, even though Philippine producers failed to utilize their import permits. The United States asserted that the administration of the quotas violated a number of WTO provisions.

### Case Resolution

- The Philippines and the United States negotiated an understanding resolving the dispute. In February 1998, the Philippines implemented the understanding by modifying an administrative order dealing with the tariff-rate quota system for pork and poultry. The new system discourages firms from holding import licenses if they fail to make use of them.

### Actions Taken to Comply

- No action required.

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<sup>13</sup>The Philippine regulations had been issued in response to a U.S. threat to request negotiations under GATT 1994 regarding Philippine failure to implement tariff rate-quotas for pork and poultry by July 1995, as called for under its Uruguay Round commitments.

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## Case 30: Japan's Measures Affecting Fruit Imports

### Parties

Plaintiff: United States

Defendant: Japan

### Outcome

- Both the WTO panel and the Appellate Body ruled against Japan. Japan eliminated the import measures in question.

### Major Case Issues

- The United States complained that Japan's varietal testing requirement was inconsistent with the WTO sanitary/phytosanitary agreement, in part because the measure was not based on scientific principles or a risk assessment, was not transparent, and was more trade restrictive than necessary.
- Japanese law prohibits the importation of certain agricultural products<sup>14</sup> because of their potential to host codling moth, which is not found in Japan. The prohibition can be lifted, however, if an exporting country can demonstrate that an alternative quarantine method achieved the same level of protection as the ban.
- Japan developed guidelines as model test procedures to confirm the efficacy of alternative methods. The guidelines outlined the testing requirements for the initial lifting of the import ban on a product and the testing requirements for approval of additional varieties of the product.
- Japan claimed that its policy was fully consistent with the sanitary/phytosanitary agreement and was entirely based on plant health considerations.

### Case Resolution

- The WTO panel found Japan's varietal testing requirement to be inconsistent with the WTO sanitary/phytosanitary agreement in a number of respects and recommended that the WTO request that Japan bring its measures into conformity with its obligations under that agreement.

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<sup>14</sup>The products were apples, cherries, peaches and nectarines, walnuts, apricots, pears, plums, and quince.

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- The Appellate Body review generally upheld the panel's finding that Japan's varietal testing requirement was inconsistent with its WTO obligations.

**Actions Taken to Comply**

- Japan eliminated its varietal testing requirement.
- The United States and Japan continue to negotiate about the provisions of the quarantine measure that will replace the former requirement.

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## Case 31: U.S. Textile and Apparel Rules of Origin

### Parties

Plaintiff: European Union

Defendant: United States

### Outcome

- The United States and the EU negotiated a solution to the dispute. The United States passed legislation to clarify its rules of origin.

### Major Case Issues

- The EU complained that U.S. changes to its rules of origin for textiles and apparel products, in particular those in section 334 of the Uruguay Round Agreements Act,<sup>15</sup> adversely affected exports of EU fabrics, scarves, and other flat textile products to the United States. These products were no longer recognized in the United States as being of European origin and thus lost the quota-free access to the U.S. market that they had previously enjoyed.

### Case Resolution

- The EU and the United States reached a mutually agreed solution to the dispute. Specifically, the United States agreed that it would propose legislation that would restore its prior rules of origin for silk accessories, dyed and printed cotton fabrics, and related products.
- When U.S. legislation was not enacted, the EU subsequently requested additional consultations. The United States then agreed to propose specific legislation amending U.S. rules of origin.

### Actions Taken to Comply

- The United States recently enacted legislation that would implement the rules of origin changes agreed to with the EU.<sup>16</sup>

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<sup>15</sup>19 U.S.C. § 3592.

<sup>16</sup>Section 405 of the Trade and Development Act of 2000 (P.L. 106-200).

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## Case 32: Korea's Taxes on Distilled Spirits

### Parties

Plaintiff: United States

Defendant: Korea

### Outcome

- Both the WTO panel and the Appellate Body ruled against Korea.

### Major Case Issues

- The United States complained that Korea imposed lower internal taxes on soju (a type of alcohol) than on other distilled spirits and liquors, such as vodka, rum, gin, whisky, and brandy, under its liquor tax laws. The United States considered the lower tax rate to violate the WTO principle of national treatment (that foreign goods should not be taxed less favorably than domestic goods).
- Korea disagreed with this claim and argued, among other things, that soju did not compete with these other alcoholic beverages.

### Case Resolution

- The WTO panel and the Appellate Body both ruled that Korea's tax laws did violate the WTO national treatment provision because soju and whiskies, brandies, cognac, rum, gin, vodka, tequila, liqueurs, and admixtures are directly competitive or substitutable products. Therefore, both bodies recommended that Korea should bring its laws into conformity with its national treatment obligations under GATT 1994.

### Actions Taken to Comply

- After arbitration on the "reasonable period of time" for Korea to come into compliance, Korea complied by setting a flat tax rate across all distilled alcoholic beverages. Korea did this by increasing its taxes on domestic products rather than lowering them significantly on imported goods.

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## Case 33: Sweden's Civil Procedures for Intellectual Property

### Parties

Plaintiff: United States

Defendant: Sweden

### Outcome

- The United States and Sweden negotiated a mutually agreed solution resolving the dispute prior to a WTO panel decision.

### Major Case Issues

- The United States complained that Sweden failed to make available provisional measures in civil proceedings involving intellectual property, as required by TRIPS, such as providing its authorities with the power to order surprise searches and seizures for relevant evidence. The U.S. action was intended to address problems involving end-use piracy of computer software.

### Case Resolution

- The United States and Sweden negotiated a solution in which Sweden indicated that it had passed legislation granting Swedish courts authority to order searches and seizures, including surprise searches, for evidence in civil proceedings involving infringements of intellectual property rights.

### Actions Taken to Comply

- The parliament of Sweden passed legislation on November 25, 1998, amending Sweden's intellectual property rights laws.

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**Case 34: U.S.  
Antidumping Order on  
Color Television  
Receivers**

Parties

Plaintiff: Korea  
Defendant: United States

Outcome

- Korea withdrew its request for a WTO panel after the U.S. Department of Commerce revoked the antidumping order in question.

Major Case Issues

- Korea complained that the United States determined not to revoke a long-standing antidumping order on the importation of color television receivers with respect to the Korean manufacturer Samsung.
- Prior to the WTO case, the Department of Commerce had determined that it could not complete the revocation review until it completed a separate review of a petition arguing that Korea was circumventing the antidumping order by assembling color television receivers in Mexico and then exporting them to the United States.

Case Resolution

- Korea withdrew its request for a WTO panel after Commerce ceased its review on the circumvention issue due to lack of domestic industry interest and subsequently revoked the Samsung antidumping order.

Actions Taken to Comply

- No action required.

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## Case 35: India's Quantitative Import Restrictions

### Parties

Plaintiff: United States

Defendant: India

### Outcome

- Both the WTO panel and the Appellate Body ruled against India. India negotiated an agreement to remove all quantitative import restrictions by April 2001.

### Major Case Issues

- The United States complained that quantitative restrictions maintained by India (import prohibitions, bans, restrictions, licenses, etc.) on more than 2,700 agricultural and industrial products violated India's WTO obligations.
- India justified these restrictions under a WTO provision allowing certain actions to protect a country's balance-of-payments situation. India proposed to phase out these measures over a 7-year period; however, no agreement was reached on this proposal.

### Case Resolution

- The panel upheld the U.S. position that India's quantitative restrictions violated WTO prohibitions. It also concluded that these measures were not justified under WTO provisions allowing a member to protect its balance of payments and that India had no right to phase out these measures. Nevertheless, the panel stated that India did not need to remove the measures immediately and suggested a negotiated implementation/phase-out period that could be longer than the normal 15-month period of reasonable time to implement a panel recommendation.
- India appealed several of the panel's rulings, including whether panels have the authority to review justification of balance-of-payments restrictions. India suggested that this authority lay with the WTO Balance-of-Payments Committee and the General Council. The Appellate Body upheld the panel on the issues appealed and found that the panel had the authority to review India's justification for its balance-of-payments restrictions.



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**Actions Taken to Comply**

- The United States and India agreed that India would eliminate all quantitative restrictions by April 2001. Most of the measures had been removed by April 2000.

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## Case 36: U.S. Antidumping Order on Korean Semiconductors

### Parties

Plaintiff: Korea  
Defendant: United States

### Outcome

- The WTO panel ruled against the United States on one issue. Korea is challenging U.S. compliance.

### Major Case Issues

- Korea sought the revocation of an antidumping order on Korean dynamic random access memory semiconductors with respect to two producers. Korea claimed that despite the absence of dumping for more than 3 consecutive years, the United States had not performed a proper revocation review. They claimed that the United States had not established the likelihood of dumping in the future and should therefore revoke the dumping order on Korean dynamic random access memory semiconductors as a remedy. The Koreans also challenged a series of U.S. procedures, including the Department of Commerce's standard for revoking an antidumping order.

### Case Resolution

- The WTO panel held that the U.S. standard for revoking an antidumping order was WTO inconsistent. Specifically, the regulatory requirement that Commerce find it "not likely" that dumping would occur in the future was inconsistent with U.S. obligations under the WTO antidumping agreement. The panel further found that since the procedure was flawed, the U.S. decision in the revocation review was also inconsistent. However, the panel rejected all of Korea's other claims, including the request that the panel suggest revocation of the antidumping order as the appropriate remedy.

### Actions Taken to Comply

- Commerce amended its antidumping regulations, deleting the "not likely" standard and replacing it with a requirement that the Secretary of Commerce consider "whether the continued application of the antidumping duty order is otherwise necessary to offset dumping." Once

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the regulation had been changed, Commerce proceeded to conduct a new review of the revocation request. Commerce determined in this new review that because future dumping was likely, continued application of the antidumping duty order was necessary.

- Korea challenged the sufficiency of the U.S. compliance efforts. As of July 1, 2000, the WTO panel had not ruled on the issue.

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## Case 37: U.S. Ban on Imports of European Poultry

### Parties

Plaintiff: European Union

Defendant: United States

### Outcome

- The EU and the United States reached a mutually agreed solution resolving the dispute prior to a WTO panel decision.

### Major Case Issues

- In April 1997, the United States imposed a ban on imports of poultry and poultry products from the EU. The United States maintained that the ban was necessary because EU authorities had failed to cooperate in determining whether EU health and safety measures for the marketing of these products provided levels of protection equivalent to new, more stringent standards adopted by the United States.
- The EU argued that the United States had failed to clarify the grounds upon which EU poultry and poultry products had become ineligible for entry into the U.S. market.

### Case Resolution

- The United States obtained EU cooperation in performing an audit of EU regulatory procedures for handling and marketing poultry products. The audit concluded that the EU poultry processing facilities and regulations did indeed provide a level of protection equivalent to that set forth under U.S. guidelines.
- Following the audit, the United States lifted the poultry ban by administrative action in August 1997.

### Actions Taken to Comply

- No action required.

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## Case 38: Mexico's Antidumping Determination on High Fructose Corn Syrup

### Parties

Plaintiff: United States

Defendant: Mexico

### Outcome

- A WTO dispute settlement panel ruled that Mexico improperly conducted its analysis in making an antidumping determination. Mexico has agreed to comply with the panel's ruling.

### Major Case Issues

- The United States brought a WTO complaint against Mexico alleging that Mexico had improperly initiated and investigated an antidumping case on imports of U.S. high fructose corn syrup. The United States argued, among other things, that Mexico had not conducted a proper threat of injury analysis because it had not considered both consumer and industrial sugar use in its analysis.
- Mexico argued that it had the right to initiate the dumping investigation and that its methodology for determining threat of injury was proper.

### Case Resolution

- Although the panel found that Mexico's initiation of the antidumping investigation was consistent with its WTO obligations, it ruled that Mexico's threat of injury determination was inconsistent for several reasons. First, Mexico inadequately considered the impact of dumped imports on its domestic industry in part by considering the impact on only a portion of the industry rather than on the whole industry. Second, Mexico did not properly determine that there was a likelihood that high fructose corn syrup imports from the United States would increase. In addition, the panel found several other instances of improper Mexican actions: applying its provisional antidumping measure for too long a period of time, and applying its final measures retroactively.

### Actions Taken to Comply

- Mexico has agreed to comply with the panel ruling by September 2000.

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## Case 39: Canada Dairy Subsidies and Quotas

### Parties

Plaintiffs: United States and New Zealand

Defendant: Canada

### Outcome

- Both the WTO panel and the Appellate Body ruled against Canada regarding its dual pricing system for dairy imports and the administration of its tariff-rate quota for milk. Canada is taking action to comply.

### Major Case Issues

- The United States and New Zealand challenged Canada's system of differential milk prices for domestic and export markets. These countries insisted that the system was in fact an export subsidy. The United States also challenged Canada's administration of its TRQ for fluid milk. As part of its Uruguay Round commitments, Canada had agreed to reduce subsidies for dairy exports and to establish a TRQ for fluid milk. In 1995, Canada implemented its new dairy export policy eliminating direct government subsidies for exports; however, the new policy established a system of differential pricing of milk based on its end-use in domestic or export markets.
- Canada argued that the pricing system was producer run and overseen by provincial marketing boards, without government involvement. Thus, it was simply a market-driven arrangement for exports, not a subsidy. Canada also argued that the TRQ for liquid milk was filled by cross-border purchases and there was no need to allow for commercial shipments of liquid milk imports.

### Case Resolution

- The panel and the Appellate Body ruled in favor of the complainants with regard to the subsidy issue. The Appellate Body also found that the Canadian dual-pricing scheme was in fact an export subsidy, even though the government of Canada was not directly funding the arrangement. Consequently, Canada would have to count exports under this arrangement against its subsidy ceiling set in the Uruguay Round.
- The Appellate Body found that Canada could count cross-border consumer traffic of liquid milk against its TRQ commitment. However,

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Canada had to lift its \$20 limit on consignments of liquid milk consumers may bring over the border.

Actions Taken to Comply

- Canada lifted (by administrative action) the \$20 limit on individual, cross-border consignments of fluid milk. Canada has agreed to come into compliance with the ruling on subsidies by the end of 2000.

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## Case 40: U.S. Tax Treatment for U.S. Foreign Sales Corporations

### Parties

Plaintiff: European Union  
Defendant: United States

### Outcome

- Both the WTO panel and the Appellate Body ruled against the United States.

### Major Case Issues

- The EU complained that the U.S. Foreign Sales Corporations (FSC)<sup>17</sup> program provides export subsidies and import substitution subsidies prohibited by the WTO subsidies agreement because (1) it exempted from direct taxes a portion of income related to exports and dividends distributed to U.S. parent companies, (2) it required that the program's tax exemption be limited to receipts from the export of products having at least 50-percent U.S. origin by market value, and (3) its administrative pricing rules gave companies several options for allocating income between the foreign sales corporation and the parent company. The EU also alleged that the program is an export subsidy that violated the Agreement on Agriculture.
- The United States responded that the FSC program was not an export subsidy and that under its WTO obligations, foreign-source income may be exempt from taxation or taxed to a lesser extent than domestic-source income. The United States asserted that the program's provisions were intended to provide a limited, territorial-type system of taxation for U.S. exports, comparable to that received by EU firms. The United States argued that agreements reached under GATT prior to the formation of the WTO exempted the FSC program.

### Case Resolution

- The panel and Appellate Body found that the FSC tax exemption measure was a prohibited subsidy under the Subsidies agreement

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<sup>17</sup> Foreign sales corporations are foreign corporations responsible for certain sales-related activities regarding the sale or lease of goods produced in the United States for export outside the United States.



because the benefits constituted revenues otherwise due to the government and were contingent on export performance.

- The Appellate Body also found that the United States had acted inconsistently with its obligations under the Agreement on Agriculture by applying export subsidies in a way that circumvented or could circumvent its export subsidy commitments for agriculture products.
- Neither the panel nor the Appellate Body ruled on the 50-percent U.S. origin requirement or the FSC administrative pricing rules.

#### Actions Taken to Comply

- The United States has until October 1, 2000, to comply with the panel ruling.

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## Case 41: Imports of Canadian Cattle, Swine, and Grain

### Parties

Plaintiff: Canada

Defendant: United States

### Outcome

- Canada and the United States reached an agreement resolving the dispute prior to a WTO panel decision.

### Major Case Issues

- In its request for consultations, Canada complained that new inspection requirements imposed by Idaho, Montana, North and South Dakota, Nebraska, and Minnesota on Canadian trucks carrying cattle, hogs, and grain passing through their states violated various WTO provisions. A number of trucks that failed to meet the new requirements were denied access to these states. Canada claimed that the state inspections were unjustified because Canadian livestock and grain exports had already met all U.S. federal health and safety requirements.
- The states claimed the inspections were undertaken for health and safety purposes.

### Case Resolution

- In October 1998, the five states involved in the dispute with Canada agreed to suspend their inspections, and in December 1998 the United States and Canada reached a bilateral agreement on the matter. In addition to the suspension of the inspections, the agreement provided for improved U.S. access to the Canadian market for live animals and grains by reducing burdensome Canadian plant and animal health requirements. Canada also agreed to regular consultations on U.S. grain exports to ensure that they are priced fairly.

### Actions Taken to Comply

- The governors of the states involved suspended inspections.

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## Case 42: Provisions of the U.S. Trade Act of 1974

### Parties

Plaintiff: European Union  
Defendant: United States

### Outcome

- The WTO panel ruled in favor of the United States.

### Major Case Issues

- The EU complained that by adopting and applying sections 301-310 of the U.S. Trade Act of 1974,<sup>18</sup> the United States breached an understanding that in exchange for other Uruguay Round participants agreeing to automatic adoption of WTO panel and Appellate Body reports and authorization of members to suspend concessions, the United States would abandon its long-standing policy of taking unilateral action against foreign trade barriers. More particularly, the EU claimed that a number of specific, strict time limits in sections 304-306 did not allow the United States to comply with WTO dispute settlement rules and GATT 1994 obligations.
- The United States responded that the EU had brought a political case based on a series of assumptions adverse to the United States. The United States contended that sections 301-310 permit it to comply with dispute settlement rules and procedures in every case: section 304 permits the USTR to base his or her determinations on adopted panel findings, and sections 305 and 306 permit the USTR to request and receive WTO authorization to suspend concessions.

### Case Resolution

- The panel found that the terms of sections 304-306, considered alone, were inconsistent with dispute settlement rules by providing the United States with discretion to make certain determinations before the completion of panel proceedings. However, this inconsistency was removed by the Statement of Administrative Action accompanying the Uruguay Round Agreements Act and U.S. representations to the panel

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<sup>18</sup>19 U.S.C. §§ 2411-2420. These provisions address foreign unfair trade practices affecting U.S. exports of goods or services.

that USTR would base any section 301 determination that there has been a violation or denial of U.S. rights under a WTO agreement on a dispute settlement finding.

- Notwithstanding these rulings, the panel stated that should the relevant U.S. representations both in the Statement of Administrative Action and before the panel be repudiated, its findings of conformity between the provisions in sections 304-306 and U.S. WTO obligations would no longer be warranted.

Actions Taken to Comply

- No action required.

# Commercial Significance of 42 U.S. WTO Dispute Settlement Cases

We examined the commercial stakes and outcomes of each of the 42 completed dispute settlement cases involving the United States (see app. III for more information on our methodology). Table 2 presents a summary of the commercial outcome of the cases, while table 3 presents a short description of each of these cases, giving information—when available—on the particular barriers or measures contested, the market size, the relevant trade or investment involved, and other indicators of the commercial relevancy of the cases to the United States.

**Table 2: Commercial Outcome of WTO Dispute Settlement Cases Involving the United States, 1995 Through March 16, 2000**

GAO case number	Case name	Commercial outcome of case
1	U.S. regulations affecting gasoline imports	Primarily environmental concerns; economic effects limited
2	Korea's agricultural shelf-life standards	U.S. achieved commercial benefits through greater market access
3	U.S. import duties on automobiles from Japan	Potentially high commercial stakes, but outcome had limited or no commercial effect
4	Japan's taxes on distilled spirits	U.S. achieved commercial benefits through greater market access
5	European Union grain tariffs	U.S. achieved commercial benefits through greater market access
6	European Union banana import regime	Limited commercial benefits because defendant did not comply
7	U.S. underwear import restraint	Restraints removed, with limited commercial effect
8	European Union ban on meat from hormone-treated animals	Limited commercial benefits because defendant did not comply
9	Japan sound recordings	U.S. achieved commercial benefits through stronger intellectual property protection
10	Canada's measures on magazines	U.S. achieved commercial benefits through greater market access
11	U.S. wool coat import restraint	Restraints removed, with limited commercial effect
12	U.S. wool shirt import restraint	Restraints removed, with limited commercial effect
13	Hungary's agricultural export subsidies	Limited commercial benefits because challenge brought primarily to uphold trade principles
14	Pakistan patent mailbox provision	U.S. achieved commercial benefits through stronger intellectual property protection
15	Portugal patent protection	U.S. achieved commercial benefits through stronger intellectual property protection
16	U.S. Helms-Burton Act	Potentially high commercial stakes, but outcome had limited or no commercial effect
17	U.S. tariff retaliation on European Union products	Potentially high commercial stakes, but outcome had limited or no commercial effect
18	Turkey's taxation of foreign films	U.S. achieved commercial benefits through greater market access
19	Japan's import measures affecting film	U.S. failed to achieve greater market access

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GAO case number	Case name	Commercial outcome of case
20	U.S. antidumping <sup>a</sup> investigation on Mexican tomatoes	Potentially high commercial stakes, but outcome had limited or no commercial effect
21	India patent mailbox provision	U.S. achieved commercial benefits through stronger intellectual property protection
22	Brazil's automobile regime	Limited commercial benefits because challenge brought primarily to uphold trade principles
23	Argentina duties on textiles, apparel, and footwear	Limited commercial benefits due to other barriers
24	Australia automotive leather export subsidies	Limited commercial benefits partly due to delayed compliance
25	U.S. ban on shrimp imports to protect turtles	Primarily environmental rather than economic concerns
26	Indonesia automobile and auto parts measures	U.S. achieved commercial benefits through greater market access
27	European Union customs classification of computer equipment	Despite losing case, market access maintained through separate agreement
28	U.S. antidumping order on urea	Duties removed, with limited commercial effect
29	Philippines pork and poultry tariff-rate quotas <sup>b</sup>	U.S. achieved commercial benefits through greater market access
30	Japan's measures affecting fruit imports	U.S. achieved commercial benefits through greater market access
31	U.S. textiles and apparel rules of origin	Settled, with limited commercial effect
32	Korea's taxes on distilled spirits	Limited commercial benefits due to other barriers
33	Sweden's civil procedures for intellectual property	U.S. achieved commercial benefits through stronger intellectual property protection
34	U.S. antidumping order on color television receivers	Duties removed, with limited commercial effect
35	India's quantitative import restrictions	U.S. achieved commercial benefits through greater market access
36	U.S. antidumping order on Korean semiconductors	Limited or no commercial effect because duties maintained
37	U.S. ban on imports of European poultry	Ban removed, with limited commercial effect
38	Mexico's antidumping determination on high fructose corn syrup	Implementation deadline not yet passed
39	Canada dairy subsidies and quotas	Limited commercial benefits because other barriers existed
40	U.S. tax treatment for foreign sales corporations	Potentially high commercial stakes, but implementation deadline not yet passed
41	U.S. imports of Canadian cattle, swine, and grain	Measures removed, with limited commercial effect
42	Provisions of the U.S. Trade Act of 1974	Potentially high commercial stakes, but U.S. prevailed

<sup>a</sup>Antidumping duties are imposed on imports to neutralize the injurious effect of unfair pricing practices known as "dumping."

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<sup>a</sup>A tariff-rate quota is the application of a lower tariff rate for a specified quantity of imported goods. Imports above this specified quantity face a higher tariff rate.

Source: GAO analysis.

**Table 3: Commercial Significance of Completed U.S. Cases in the WTO, 1995-2000**

GAO case number	Case name	Commercial significance
1	U.S. regulations affecting gasoline imports	This dispute involved Environmental Protection Agency environmental regulations on imports of finished gasoline products. Imports of finished gasoline account for generally less than 5 percent of the more than \$2 billion U.S. market, and the particular imports entering the market under the modified rules account for only 0.18 percent of the market. Also, the regulation remains in place with modifications, so the economic effects of the outcome of this dispute are likely to be limited for the United States. However, for the East Coast, imports of finished gasoline have typically represented between 10 and 20 percent of supplies. Also, imports have fluctuated somewhat over the past 4 years, and the regulation may have affected the choice of suppliers from which the United States imports. For certain importers, such as Venezuela, whose largest market is the United States, the commercial consequences of the dispute are potentially important.
2	Korea's agricultural shelf-life standards	This dispute involved a U.S. challenge of Korea's determination of shelf-life standards for several types of agricultural products. Korean requirements adversely affected vacuum-packed chilled beef and pork; frozen meat; other frozen foods; and other dried, packaged, canned, or bottled products. The Department of Agriculture's Economic Research Service estimated, based on Japanese meat consumption and demographics as proxies for Korea, that losses for chilled beef were between \$87 million and \$99 million and for chilled pork were between \$79 million and \$156 million in 1994. The United States and Korea resolved this dispute through consultations, and Korea modified its shelf-life requirements. Korea is one of the U.S.' top markets for exports of beef and pork products, receiving about 17 percent (about \$350 million) of U.S. worldwide exports of these products in 1999.
3	U.S. import duties on automobiles from Japan	This dispute involved a Japanese challenge of U.S. import duties to be imposed on imports of Japanese luxury vehicles. Under section 301 of the 1974 U.S. Trade Act, the USTR had determined that the Japanese government had constructed barriers to U.S. exports in the Japanese "aftermarket" for replacement auto parts and accessories that were burdening or restricting U.S. commerce. It was announced that 100 percent duties were to be placed on specific luxury models of Honda, Toyota, and other Japanese exports valued at \$5.9 billion in 1994. After two rounds of bilateral negotiations, the United States and Japan announced a bilateral agreement on autos and auto parts. This bilateral agreement resolved the U.S. section 301 case, and Japan did not pursue its WTO challenge to the duties.
4	Japan's taxes on distilled spirits	This dispute had commercial benefits for the United States. Japan is one of the leading export markets for U.S. distilled spirits, receiving about 18 percent (\$77 million) of U.S. exports of these products in 1999. As a result of the settlement, tax rates on whiskey and other distilled spirits were reduced, and tariffs on these products are being eliminated at an accelerated rate beginning in 1997. The U.S. industry has expressed satisfaction with the outcome, estimating \$94 million in annual tax and tariff savings. Between 1997 and 1998, exports of whiskey (the largest U.S. distilled spirit export to Japan) increased by 18 percent (\$10 million) to \$67 million.

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GAO case number	Case name	Commercial significance
5	European Union grain tariffs	This dispute concerned the EU's calculation of duties on U.S. exports of grains (such as rice, wheat, rye, barley, corn, and sorghum). The United States was concerned about U.S. access of high-value rice and certain barley exports to the EU. The dispute was resolved in 1997, with the EU agreeing to modify its system and to rebate excessive charges and reduce tariffs on certain rice exports. The EU imported over \$300 million in U.S. grains in 1999. U.S. exports of the particular rice affected by the higher duties ranged between \$50 million and \$75 million annually from 1996 through 1999. Also, the EU accounted for 13 percent of U.S. rice exports and was the U.S.' third largest regional market after North America and Japan in 1999. In addition to changes made for rice exports, the EU also agreed to establish a tariff-rate quota for barley imports intended to maintain market access for U.S. exports.
6	European Union banana import regime	This dispute involved restrictions on the access and marketing of bananas from certain countries by the EU that the United States (along with four other countries) challenged as WTO inconsistent. The case affects the interests of U.S. companies that distribute bananas in the EU. The WTO agreed with the arguments of the plaintiffs and requested that the EU modify its banana regime. Following some changes the EU made, the WTO ruled that these were insufficient, determining that damages to the United States from the EU's regime amounted to \$191.4 million. This is the amount of retaliation the WTO authorized the United States to impose on EU exports to the United States.
7	U.S. underwear import restraint	This dispute involved Costa Rica's challenge to a U.S. import restraint on underwear. The U.S. Committee for the Implementation of Textile Agreements found that certain imports of Costa Rican underwear were causing serious damage to the U.S. industry and decided to impose an import restraint. Imports of these products in 1994 were approximately \$87 million, accounted for 15 percent of all imports of underwear, and were up 22 percent in terms of quantity over the previous year. Imports of Costa Rican underwear were equivalent to about 8.8 percent of U.S. underwear production in the year ending September 1994. Costa Rica appealed the decision to the Textile Monitoring Body, which did not find serious damage and could not reach a consensus on whether there was a threat of serious damage. The restraint remained in place for 2 years but was allowed to expire, as a result of a WTO decision against the United States.
8	European Union ban on meat from hormone-treated animals	This dispute is part of a long-running quarrel between the United States and the EU over EU restrictions on imports of beef produced from hormone-treated cattle. The United States originally challenged this ban through section 301 sanctions in 1989, then through the WTO dispute settlement procedures in 1996. The WTO agreed with the arguments of the United States that the EU had improperly restricted imports and set a damage figure of \$116.8 million. This is the amount of retaliation that the WTO authorized the United States to impose on EU exports to the United States.
9	Japan sound recordings	This dispute involved the failure of Japan to extend copyright protections for existing sound recordings back a full 50 years as the WTO agreement on intellectual property required. The successful settlement of this dispute provided direct economic benefits to the United States and may have assisted in resolving similar disputes with other countries. Based on actual sales in the Japanese market at the time, U.S. industry estimated losses of approximately \$500 million. In addition to granting protections in the large Japanese market, industry representatives cited this case as useful in securing retroactive protections in other countries for sound recordings and classic motion pictures. The U.S. recorded music industry informed USTR that it had world-wide foreign sales of over \$15 billion in 1995.



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GAO case number	Case name	Commercial significance
10	Canada's measures on magazines	This dispute involved removing restrictions on access by U.S. publishers to the Canadian magazine market. In addition to Time-Warner ceasing production of a Canadian edition of Sports Illustrated, a prohibitive excise tax that Canada imposed was designed to deter entry of more than 100 potential U.S. "split-run" publications that had been identified by a Canadian task force. Under an agreement reached between Canada and the United States in 1999, Canada agreed to remove the ban and excise tax and to allow increased investment in existing Canadian magazines or wholly owned new publications. The advertising revenue of magazines published in Canada was about \$470 million in 1996-97, according to Canada's statistical agency. The Canadian government reported in 1998 imports of U.S. periodicals of about \$593 million. Industry sources believe that the bilateral agreement creates new opportunities in Canada and say that the market may grow with more competition. Canada has enacted some of the changes agreed to under the agreement, while others are still pending.
11	U.S. wool coat import restraint	This dispute involved India's challenge to a U.S. import restraint on wool coats in 1995. The U.S. Committee for the Implementation of Textile Agreements found that certain imports of wool coats were causing serious damage to the U.S. industry. Imports of these products in 1994 were approximately \$4.6 million, up 402 percent in terms of quantity over the previous year. Indian wool coats accounted for 3.1 percent of all imports of wool coats and were equivalent to about 4.1 percent of U.S. wool coat production for the 12-month period ending in September, 1994. India referred the U.S. decision to impose an import restraint to the Textile Monitoring Body, which did not find serious damage and could not reach consensus on whether there was a threat of serious damage to U.S. industry. India dropped its WTO dispute after the United States removed the restraint.
12	U.S. wool shirt import restraint	This dispute involved India's challenge to a U.S. import restraint on wool shirts and blouses in 1995. The U.S. Committee for the Implementation of Textile Agreements found that certain imports of wool shirts and blouses were causing serious damage to the U.S. industry. India wool shirt and blouse imports from February 1993 through January 1994 were approximately \$7 million, up 414 percent in terms of quantity over the previous year. Imports of wool shirts and blouses from October 1993 through September 1994 were about equal to U.S. wool shirt and blouse production. India challenged the U.S. decision to impose an import restraint in the Textile Monitoring Body, which did find a threat of serious damage. Although India prevailed in its subsequent challenge before the WTO panel and Appellate Body, the Committee removed the restraint prior to the WTO decisions due to a steady decline in imports. U.S. imports of wool shirts and blouses from India have remained between about \$1 million and \$3 million annually from 1995 to 1999.
13	Hungary's agricultural export subsidies	This dispute involved a challenge to Hungary's failure to comply with its negotiated commitments following a change in government. The United States and several other WTO members were concerned that Hungary had increased its export subsidies for agriculture above the levels it had committed to in the Uruguay Round. The economic stakes for the United States were minimal. U.S. government officials pointed out that U.S. producers and exporters do not face much direct competition from Hungarian agricultural exports. However, the case was important in demonstrating that WTO members could not arbitrarily violate their export subsidy reduction commitments.
14	Pakistan patent mailbox provision	This dispute involved the failure of Pakistan to establish procedures allowing companies to file patent applications on pharmaceutical and agricultural chemicals, and providing exclusive marketing rights. The successful resolution of this dispute offers potential economic benefits to the United States and may be useful in encouraging other developing countries besides Pakistan to fully enforce their WTO commitments. Less than 1 percent of the \$8.8 billion in U.S. world exports of pharmaceuticals currently go to Pakistan (\$3.3 million in 1999). Estimates of the overall size or potential of the Pakistani pharmaceutical and agricultural chemical markets are not available. However, the United States is one of the leading exporters of these products, and developing countries are beginning to implement stronger intellectual property protections as part of their WTO commitments.

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GAO case number	Case name	Commercial significance
15	Portugal patent protection	This dispute involved Portugal's failure to provide retroactive protection for patents consistent with WTO obligations. This increase in patent terms affected approximately 7,000 patents, according to a U.S. Patent and Trademark Office official. The United States, as a major exporter of intellectual property, should benefit economically from this change, though exact figures are not available. Less than 1 percent of the \$8.8 billion in U.S. world exports of pharmaceuticals currently go to Portugal (\$7.7 million in 1999).
16	U.S. Helms-Burton Act	This dispute involved an EU complaint about what the EU saw as the extraterritoriality of U.S. sanctions against Cuba. The EU was concerned about the commercial impact of these sanctions on EU interests. The United States has frequently used economic sanctions. For instance, as of 1998, the United States had in effect 42 separate statutes authorizing or setting forth economic sanctions on 29 countries, according to a U.S. International Trade Commission study.
17	U.S. tariff retaliation on European Union products	This dispute involved a 1996 EU challenge to duties placed on EU exports to the United States since 1989. The duties were imposed under section 301 in response to the EU ban on beef from hormone-treated animals. The United States removed these duties in July 1996, citing the initiation of a challenge to the ban under the WTO's new dispute settlement procedures. One estimate places the value of the duties removed at approximately \$100 million, covering tomatoes, wine coolers, and beef. The WTO ruled in favor of the United States on the EU's ban on hormone-treated beef in 1998, and after the EU failed to comply the United States initiated retaliation of \$116.8 million on EU exports to the United States.
18	Turkey's taxation of foreign films	This dispute involved discriminatory taxes Turkey placed on foreign films. The United States challenged the 25 percent tax on foreign films, and Turkey agreed to equalize taxes across films by lowering the rate on foreign films. The U.S. industry noted that Turkey is the largest market for films in the Middle East, with 1999 revenues of \$23 million. Revenues in 1998, the year following the removal of the tax, nearly doubled over the average of the previous 3 years, while the regional average only rose by 10 percent. Also, the successful resolution of this dispute was cited by U.S. industry as useful in discussions with other countries with similar measures.
19	Japan's import measures affecting film	The dispute involved large, but unrealized, economic benefits for the United States. Japan is the second largest market in the world for photographic film and paper products. In 1999 Japanese industry estimated that the size of the market was between \$2.5 billion and \$3 billion. Kodak argued that the Japanese government had fostered barriers to market access and distribution in Japan. Kodak estimates that its exports of film account for approximately 7 to 10 percent of the Japanese market, whereas it commands about a 44 percent share in the rest of the world. The WTO found insufficient evidence that actions by the Japanese government had limited Kodak's access to the market. Kodak reported that in 1999 it exported over \$360 million in film and paper products to Japan either directly from the United States or after processing in third countries.
20	U.S. antidumping investigation on Mexican tomatoes	This dispute involved Mexico's challenge to the initiation of a U.S. antidumping order on imports of fresh tomatoes. The U.S. International Trade Commission reported that imports of Mexican fresh tomatoes were \$452 million, or almost 36 percent, of the \$1.3 billion U.S. market in 1995. The Department of Commerce and the U.S. International Trade Commission made preliminary determinations that the Mexican imports were being sold at less than their fair value and were causing material injury to the U.S. industry. If the final determinations had upheld these findings, Commerce could have placed duties on these imports to raise their price up to the fair market value. Mexico requested WTO consultations about this issue. However, Commerce resolved the matter with a formal commitment by Mexican growers not to sell their exports below a certain price. This agreement was reached to eliminate the injurious effects of the dumped imports on the U.S. industry.

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GAO case number	Case name	Commercial significance
21	India patent mailbox provision	This dispute involved the failure of India to establish procedures allowing companies to file patent applications on pharmaceutical and agricultural chemicals, and providing exclusive marketing rights. The successful resolution of this dispute offers potential economic benefits to the United States and may be useful in encouraging other developing countries to fully enforce their own WTO commitments. Exact estimates of the value of the Indian pharmaceutical and agricultural chemical markets are not available, but preliminary U.S. industry estimates on a limited sample of pharmaceuticals show lost sales near \$100 million. Also, the Indian pharmaceutical market is one of the larger developing country markets. The United States is a major exporter of pharmaceutical products (\$8.8 billion in worldwide exports in 1999), but less than 1 percent currently go to India (\$11.4 million in 1999).
22	Brazil's automobile regime	This dispute involved access to and investment in the Brazilian auto market by U.S. auto companies. Brazil instituted several measures under its auto program that discouraged imports by firms not invested in Brazil and provided benefits to those that were. U.S. exports of autos and auto parts to Brazil are limited, and major U.S. automakers were already invested in Brazil and receiving the benefits of the program. However, smaller U.S. firms were not invested in Brazil, and the major U.S. automakers that were had WTO-inconsistent conditions attached to their investments. Brazil resolved the dispute with the United States by committing to eliminate the WTO-inconsistent aspects of the program by specific dates and to not extend the program into a Mercosur <sup>a</sup> -wide auto regime. Brazil was a large recipient of U.S. auto investment. U.S. firms initiated investments in Brazil of over \$2 billion during 1995 and 1996 and announced plans for several billion more by this year. Those investments were primarily for production and sale of autos and auto parts in Brazil and the South American regional economy. U.S. auto and auto parts exports to Brazil in 1998 were \$101 million and \$954 million, respectively—only 0.4 and 2 percent of U.S. worldwide exports of these products.
23	Argentina duties on textiles apparel, and footwear	This dispute involved a U.S. challenge of Argentina's calculation of duties and imposition of taxes on U.S. exports of various textiles, apparel, and footwear. The WTO found in favor of the United States, and Argentina complied with the decision. Duties that were previously above Argentina's 35-percent tariff commitment must conform to this level, and a statistical tax was found inconsistent. Argentina complied by replacing the WTO-inconsistent duties with ones that met their obligations and by raising lower rates to their higher bound rates to compensate for lost revenue. As a result, Commerce Department officials expected these changes to have minimal effect on trade.
24	Australia automotive leather export subsidies	This dispute, which concerns the removal of Australian export subsidies to its sole automotive leather producer, was just recently resolved. Australia's manufacturer received a prohibited export subsidy of 30 million Australian dollars (about \$22.3 million) in 1997. U.S. domestic producers of automotive leather are concerned about competing with subsidized exports in the U.S. and world markets. U.S. industry estimates that the U.S. automotive leather market was \$750 million in 1999 and has been growing steadily. Although a WTO panel found in favor of the United States, the panel later ruled that Australia had not complied with the panel's decision requiring the repayment of the subsidy. Australia and the United States then negotiated a solution under which the subsidy recipient agreed to a partial repayment of the subsidy, and Australia agreed to exclude automotive leather from any future subsidies or subsidy programs.
25	U.S. ban on shrimp imports to protect turtles	This dispute involved U.S. restrictions on imported shrimp caught in a way that did not adequately protect sea turtles. It had limited economic consequences for the United States. The United States imported over \$3 billion worth of shrimp in 1998, about 89 percent of the total supply of shrimp in the United States. The share of imports in total supply has actually risen since 1995 despite the import restrictions and decreased exports by some countries. Therefore, the restrictions have potentially affected the source of U.S. imports but not necessarily the overall size of these imports. Malaysia, which was not certified by the State Department as meeting the requirements for protecting sea turtles, saw its exports fall in 1997 and 1998, while Thailand, which is certified, has seen its exports rise.

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GAO case number	Case name	Commercial significance
26	Indonesia automobile and auto parts measures	This dispute involved access to and investment in the Indonesia auto market by U.S. auto producers. Indonesia instituted several measures under its auto programs that discriminated against imports and provided benefits to domestic firms over foreign-owned producers. U.S. direct exports of autos and auto parts to Indonesia were only \$2.1 million and \$38 million in 1998, respectively—less than 1 percent of U.S. world exports of these products. However, U.S. automakers had intended to invest approximately \$750 million in Indonesia to integrate Indonesia into a wider network of production in Southeast Asia. Also, final products produced in Indonesia and the region would be marketed in Indonesia. Indonesia has complied with the WTO decision by modifying its auto regime.
27	European Union customs classification of computer equipment	This dispute involved a change in the tariffs U.S. exports to the EU faced in 1995 on certain computer networking equipment and computers with multimedia capability. It had potentially large economic consequences for U.S. producers. Although the United States lost its challenge to the EU's increase in tariff rates, negotiations occurring at the same time on the Information Technology Agreement ended up leading to the removal of tariffs on January 1, 2000, on the products involved. The European market for computer networking equipment totaled over \$5 billion in sales annually, and U.S. companies accounted for more than half of the market. The United States had said that by reclassifying these products, the EU had raised the tariffs on certain equipment from 2 percent to 7.5 percent and on personal computers from 3.5 percent to 14 percent.
28	U.S. antidumping order on urea	This dispute involved the EU's challenge to a 1987 U.S. antidumping order that had remained in place on imports of urea, a chemical compound used in fertilizers and animal feed, from regions of Germany formerly a part of the German Democratic Republic. Citing lack of U.S. industry interest, Commerce completed a changed circumstances review and dropped the dumping order, thus ending the case. The original antidumping order placed a 44.88 percent duty on urea imports from the German Democratic Republic. The U.S. International Trade Commission reported that imports of urea from the German Democratic Republic in 1986 were about \$14.6 million, or 2.4 percent of the over-\$600 million U.S. market.
29	Philippines pork and poultry tariff-rate quotas	This dispute involved access to the Philippine market by imported pork and poultry products. The United States challenged the failure of the Philippines to implement a tariff-rate quota system under its WTO obligations. The dispute was settled through consultations and a Philippine commitment in 1998 to administer its tariff-rate quota system so as to improve access to its market. U.S. exports of poultry products to the Philippines increased from about \$2 million in 1998 to about \$18 million in 1999. U.S. pork exports also increased from about \$1.4 million in 1998 to about \$2.2 million in 1999.
30	Japan's measures affecting fruit imports	This dispute involved a U.S. challenge to a Japanese requirement that individual varieties of fruits, such as apples, nectarines, and cherries, be inspected before entry into the Japanese market. The WTO agreed with the U.S. challenge, and Japan removed the ban on five varieties of apples and five varieties of cherries in July 1999. The Agriculture Department estimated that exports of these products could increase by \$50 million as a result of the removal of the bans. In December 1999 and March 2000, shipments of two varieties of apples entered the Japanese market. However, these and the other varieties still face costly inspection certification requirements (distinct from the varietal testing issue). The United States exported about \$1 million in fresh apples and almost \$90 million in fresh cherries to Japan in 1999.
31	U.S. textiles and apparel rules of origin	This dispute involved an EU challenge to a U.S. change in its rules of origin, which affect imports of textile products. The EU contended that the change adversely affected its fabrics, scarves, and other flat textile products shipped to the United States by categorizing them as non-EU and thus subject to textile quotas. The United States and the EU settled the dispute in August 1999, and the United States enacted legislation in May 2000 that confers EU origin to certain products if they were both dyed, printed, and subject to additional finishing operations in the EU. U.S. imports from the EU of cotton or certain manmade fiber printed fabrics were over \$7 million, and U.S. imports of silk printed fabrics were over \$18 million in 1999.

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GAO case number	Case name	Commercial significance
32	Korea's taxes on distilled spirits	This dispute involved discriminatory taxes that Korea leveled against imports of distilled spirits that competed with soju, which were domestically produced. It was a legal victory for the United States but had limited economic benefits. Korea complied with its WTO obligations primarily by raising the taxes it charged on soju to a rate equal to taxes on other distilled spirits. Tax rates on imported distilled spirits were lowered, but the U.S. industry contends that rates, although nondiscriminatory, still remain too high to provide effective market access. The U.S. industry considers Korea a potentially large market for exports. However, U.S. exports to Korea of distilled spirits (about \$1 million in 1999) represent less than 1 percent of all U.S. exports of these goods. Also, despite recent increases in U.S. exports since the Asian financial crisis, U.S. exports of distilled spirits to Korea still remain below 1996 levels.
33	Sweden's civil procedures for intellectual property	This dispute involved improving the enforceability of intellectual property rights in Sweden. The successful resolution of this dispute may help to reduce piracy of software products, offering commercial benefits to U.S. producers. The U.S. business software industry was concerned about its ability to conduct surprise searches for pirated software. U.S. industry estimated that Sweden had sales of business personal computer application software of \$313 million and a piracy rate of 38 percent (compared with Western Europe's average of 36 percent), resulting in \$119 million in revenue losses in 1998. Worldwide, the U.S. industry reported revenues on business personal computer application software of \$17.8 billion in 1998 and estimated that it had lost about \$11 billion to piracy that same year. The resolution of this dispute has also been useful in negotiations with other northern European nations that also did not permit the surprise searches the industry sought.
34	U.S. antidumping order on color television receivers	This dispute involved a Korean challenge to a 1984 U.S. antidumping order on color television imports. Following a change in interest by U.S. industry, the Commerce Department revoked the duty. The original antidumping order placed duties ranging from less than 1 percent to over 16 percent on imports of color television receivers from Korea. Imports from Korea accounted for \$108 million in 1982, 2.8 percent of the \$3.9-billion U.S. market.
35	India's quantitative import restrictions	This dispute involved a U.S. challenge to India's use of WTO balance-of-payments provisions to justify import restrictions and bans. The WTO agreed with the U.S. challenge, and India began removing these restrictions. The barriers covered 2,700 tariff lines of goods, about one third of India's entire tariff schedule. Removal of such a large number of quantitative restrictions should provide greater market access for U.S. exporters. Under an agreement reached on implementation, India removed 1,999 of the 2,700 by April 1, 2000. The remaining barriers are scheduled to be removed by April 1, 2001. However, India negotiated with the United States increases in its bound rates on some agricultural products in exchange for greater access for others, according to USTR. Also, India may choose to increase some tariff rates up to their bound rates to compensate for the removal of the barriers.
36	U.S. antidumping order on Korean semiconductors	This dispute involved a Korean challenge of a 1993 U.S. antidumping order on dynamic random access memory semiconductors. The original antidumping order found that some Korean producers of certain semiconductors were selling their products in the U.S. market at less than fair value and caused material injury to the U.S. industry. Duties were imposed on a portion of the nearly \$730,000 of imports from Korea in 1991. These comprised about 30 percent of all imports of dynamic random access memory semiconductors. Imports in turn made up about 71 percent of the \$3.4 billion U.S. market. In response to the WTO panel ruling, although Commerce modified one of its revocation review procedures, it completed a review under the new procedure and determined that the antidumping duties should remain in effect.
37	U.S. ban on imports of European poultry	This dispute involved an EU challenge to a Department of Agriculture ban on imports of poultry products until negotiations on health and safety standards were completed. The ban was initiated in April 1997 and was removed in August following inspections of EU facilities by Agriculture. Agriculture officials said that importers of the particular products affected were aware of the possibility of the ban and had increased inventories. Therefore, they believe the ban had very little impact on actual trade flows. U.S. imports of the poultry products affected were about \$1,940,000 in 1997, down slightly from about \$1,980,000 in 1996.

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GAO case number	Case name	Commercial significance
38	Mexico's antidumping determination on high fructose corn syrup	This dispute involved a U.S. challenge to Mexico's initiation of an antidumping investigation on U.S. exports of high fructose corn syrup, a sugar substitute. The WTO agreed with the U.S. challenge. A successful resolution of this case, which has not yet been completed, offers potential commercial benefits to U.S. producers. Following the imposition of duties ranging between 60 and 102 percent in 1997 and 1998 on certain types of high fructose corn syrup, U.S. exports have fallen from a peak of about \$63 million in 1997 to about \$55 million in 1999. However, both these figures are well above the \$27 million (or less) the United States exported prior to 1996. U.S. exports of high fructose corn syrup command about 7 percent of the Mexican sweetener market (sugar and high fructose corn syrup), based on estimates from the U.S. Foreign Agricultural Service. Mexico has agreed to comply with the panel ruling by September 2000.
39	Canada dairy subsidies and quotas	This dispute involved a U.S. challenge to Canada's subsidies on exports of dairy products and limitations on market access in Canada for fluid milk. The commercial benefits of the successful WTO ruling for the United States are likely to be limited, but the case was important to deter any circumvention of the export subsidy reduction commitments on agricultural products. The Department of Agriculture estimated that the economic consequences of the reduction in Canadian exports of subsidized dairy products will be minimal since Canada accounts for less than 1 percent of dairy products traded internationally, and exports to the United States account for only 0.2 percent of U.S. milk production. Under an agreement reached with the United States and New Zealand, Canada will comply immediately with its WTO export subsidy commitments on butter, skimmed milk powder, and an array of other dairy products. Beginning in the 2000-2001 market year, Canada will reduce its exports of subsidized cheese to a level that is less than half of the volume exported in recent years. The WTO also found that Canada was improperly implementing its tariff-rate quota on fluid milk. U.S. industry officials estimated greater access could bring an additional \$45 million in sales to the U.S. dairy business. However, the two countries do not currently export fluid milk to each other (except in retail-size containers) because of ongoing work on developing equivalency measures on health, sanitation, and inspection standards.
40	U.S. tax treatment for foreign sales corporations	This dispute involved an EU challenge to U.S. tax laws that allowed exemption from taxation of a portion of income related to exports of foreign sales corporations. The WTO found that the U.S. measures were prohibited export subsidies. The United States has until October 1, 2000, to bring its laws into conformity with its WTO obligations. The United States has not fully determined how it will comply with the WTO ruling. The commercial stakes of this dispute are potentially large. The foreign sales corporation tax provisions allow corporations a 15-percent to 30-percent tax exemption on exports used abroad. The last Treasury report on the foreign sales corporations issued in 1997 on taxable year 1992 data shows \$152.3 billion in exports benefited from the exemptions, with an estimated revenue cost of the program of \$1.3 billion and an estimated export gain due to the program of \$1.5 billion.
41	U.S. imports of Canadian cattle, swine, and grain	This dispute involved U.S. state-level actions that restricted access to the U.S. market of some Canadian trucks containing cattle, swine, and grain. The dispute was resolved through an agreement that suspends the actions but also seeks to improve market access into the Canadian market for animals and grains. The direct effect of the U.S. restrictions was limited, but the resulting agreement may improve access to the Canadian market. The United States imported over \$1.4 billion from Canada and exported over \$300 million to Canada of live cattle, swine, and grain in 1999.
42	Provisions of the U.S. Trade Act of 1974	This dispute involved an EU challenge to the WTO consistency of U.S. section 301 trade law and related provisions. The case was important to the United States commercially since section 301 is used to address a wide variety of foreign trade practices with potentially large commercial values. However, USTR noted that since this dispute did not involve a particular application of section 301, had the United States lost the case and had chosen not to comply, the EU might not be able to show any actual commercial damages to retaliate against. The United States brought a total of 119 section 301 cases from 1975 through August 1999. On average this amounted to about five cases per year, both before and after the formation of the WTO.

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<sup>a</sup>Mercosur, the Common Market of the South, was created in 1991 by Argentina, Brazil, Paraguay, and Uruguay.

Source: GAO analysis.



# Objectives, Scope, and Methodology

The Chairman of the House Ways and Means Committee requested that we review the WTO's dispute settlement system, focusing on WTO member countries' use of the system over the past 5 years. In conducting the work, we examined (1) the outcome and commercial impact of completed cases involving the United States and (2) the major issues that have emerged in using the system.

To evaluate the outcome and impact of cases involving the United States, we examined 42 cases involving the United States that the Office of the U.S. Trade Representative identified as completed as of March 16, 2000. Completed cases included those that had gone through WTO litigation with a panel and/or Appellate Body ruling and cases that were resolved without a WTO ruling. Our analysis included subsequent actions taken on these cases as of early July 2000.

To determine the impact of the cases on U.S. laws and regulations, and on foreign practices, we identified those cases whose outcome resulted in a change in laws, regulations, or guidelines or any change in administrative procedures. We reviewed WTO dispute settlement documents including requests for consultations, panel and Appellate Body decisions, and other documents recording how the resolution of the cases was to be implemented. We also reviewed U.S. *Federal Register* notices where appropriate, as well as pertinent U.S. laws and regulations. We interviewed senior officials from the Office of the U.S. Trade Representative, including the Assistant U.S. Trade Representative for Monitoring and Enforcement, on the major issues and outcomes of all 42 cases. Regarding particular cases, we also met with senior officials from the Departments of Agriculture, Commerce, State, and the Treasury, as well as the Environmental Protection Agency. We also spoke with industry representatives, interest groups, trade attorneys, and academics knowledgeable about WTO cases. To determine whether the cases resulted in significant changes in U.S. laws and regulations, we primarily considered the nature of the change—whether substantive or procedural—and the degree to which the change impacted U.S. programs or U.S. trade. Our assessment was based on our own analysis as well as that of the affected U.S. agency and relevant interest groups and industry associations. To determine the changes in foreign practices, we relied on WTO and foreign government documents, as well as interviews with U.S. government officials from the agencies previously listed. We did not conduct an independent analysis of the foreign changes or confirm those changes with the individual foreign governments.



To evaluate the commercial effects of the 42 cases, we examined the available evidence for each case concerning the U.S. commercial interests involved and the commercial consequences for the United States of the case's resolution. However, we did not formally assess the economic impact on the United States of each dispute's outcome. To present indicators of the commercial interests involved in the disputes, we gathered information on the market size, the level of investment, and the level of trade in the cases. In categorizing cases as having potentially high commercial stakes, we examined whether the case involved a high share of a particularly large market, large duties or sanctions, or wider implications for U.S. trade and trade policy. We also examined the trade barriers involved and the extent to which they were or might be removed. In cases involving intellectual property protection, we evaluated whether such protection had increased as a result of the case. In addition, we examined changes in trade flows of particular products after the resolution of a case.

To evaluate the commercial consequences of the cases, we also interviewed senior government officials and industry experts with the Office of the U.S. Trade Representative; the Departments of Agriculture, Commerce, Energy, State, and the Treasury; as well as officials from the U.S. International Trade Commission, the Patent and Trademark Office, and the National Marine Fisheries Service. We used trade, market, and other data from the Departments of Commerce, Energy, Agriculture, and the Treasury, as well as the U.S. International Trade Commission, and the National Marine Fisheries Service. When available, we examined government and industry group estimates of the economic impact of the cases; however, we did not verify their results.

To examine the major issues that have emerged during the first 5 years of the WTO dispute settlement system, we reviewed U.S. government reports and documents; legal texts and journals, and conference proceedings; and other papers on WTO dispute settlement. In addition, we interviewed senior U.S. government officials at the Departments of State, the Environmental Protection Agency, the U.S. Department of the Treasury, and the Office of the U.S. Trade Representative; representatives from the President's Advisory Committee on Trade Policy and Negotiations; law professors; lawyers in private practice; and representatives of several nongovernmental organizations in the consumer, health, and environmental protection fields. The focus of our inquiry was on identifying major concerns in the areas of sovereignty, compliance, timeliness, and transparency as well as on obtaining views on whether any of the 42 specific cases involving the United States we examined confirmed

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**Appendix III**  
**Objectives, Scope, and Methodology**

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or allayed these concerns. Regarding sovereignty, the specific issue we addressed was the extent to which U.S. participation in the WTO dispute settlement system affects the U.S. government's actions in the health, safety, or environmental areas or with respect to unfairly traded imports.

We conducted our work from March through July 2000 in accordance with generally accepted government auditing standards.

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# GAO Contact and Staff Acknowledgments

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# Glossary

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Ad Valorem	Ad valorem is any charge, tax, or duty that is applied as a percentage of value.
Antidumping Measures	Antidumping measures include a duty or fee imposed to neutralize the injurious effect of unfair pricing practices known as "dumping."
Applied Tariff Rate	Applied tariff rates are the actual tariff rates WTO member countries currently apply to imports.
Balance-of-Payment Provisions	Balance-of-payment provisions allow a WTO member to temporarily impose price or quantity restrictions on imports when facing a serious decline or low level of its monetary reserves in order to increase its foreign currency holdings.
Bound Tariff Rate	Bound tariff rates are most-favored-nation tariff rates resulting from GATT negotiations and thereafter incorporated as integral provisions of a country's schedule of concessions. The bound rate may represent either a reduced tariff rate or a commitment not to raise the existing rate.
Copyright	A copyright is an intellectual property right in an original work of authorship that arises automatically upon creation of such a work and belongs, in the first instance, to the author.
Countervailing Duty	A countervailing duty is a special duty an importing country imposes to offset the economic effect of a subsidy and thus prevent injury to a domestic industry caused by a subsidized import.
De Minimis Dumping or Subsidy Level	De minimis dumping is the level below which a dumping margin or subsidy is considered to be negligible. Antidumping or countervailing duty actions are terminated in cases where the margin of dumping or level of subsidy is below the de minimis level.

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Dumping	Dumping is the sale of a commodity in a foreign market at a lower price than its fair market value. Dumping is generally recognized as unfair because the practice can disrupt markets and injure producers of competitive products in an importing country.
Duty	A duty is a tax imposed on imports by the customs authority of a country. Duties are generally based on the value of the goods (ad valorem duties), other factors such as weight or quantity (specific duties), or a combination of value and other factors (compound duties).
Export Subsidy	An export subsidy is generally a subsidy that is provided on the basis of export performance.
Foreign Sales Corporation	The Foreign Sales Corporation provisions of the U.S. Internal Revenue Code provide an income tax benefit for exporting, permitting firms to exempt between 15 percent and 30 percent of export income from taxation.
General Agreement on Tariffs and Trade	The General Agreement on Tariffs and Trade was created in 1947 as an interim measure pending the establishment of the International Trade Organization, which never came into being. Operating in the absence of an explicit international organization, GATT provided the legal framework for international trade, with its primary mission being the reduction of trade barriers, until the advent of the WTO in 1995.
Intellectual Property Rights	Patents, trademarks, and copyrights are the three primary forms of intellectual property rights in worldwide use. They encourage the introduction of innovative products and creative works to the public by guaranteeing their originators a limited exclusive right, usually for a specified period of time, to whatever economic reward the market may provide for their creations.
Local Content Requirements	Local content requirements are the most common form of trade-related investment measures. They oblige an investor to purchase or use a specific amount of inputs from local suppliers. Local content requirements are used

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Glossary

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in an attempt to ensure that the investment increases local employment and develops physical and human capital.

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**Most-Favored-Nation Treatment**

Most-favored-nation treatment is a principle of nondiscrimination that commits all WTO signatories to extend the same treatment to all other signatories.

**National Treatment**

National treatment is the act of treating a foreign product or supplier no less favorably than domestic products or suppliers.

**Nontariff Trade Barriers**

Most nontariff trade barriers are measures used at the border to restrict the inflow of foreign goods. Major categories of nontariff barriers include quantitative import restrictions such as quotas, voluntary export restraints, and price controls.

**Patent**

A patent protects an invention by giving the inventor the right to exclude others from making, using, or selling a new, useful, nonobvious invention during a specific period of time.

**Rules of Origin**

Rules of origin are the criteria used to define where a product was made. They are an essential part of trade rules because several policies of an importing country, including quotas, preferential tariffs, antidumping actions, and countervailing duties, vary depending on the exporting country.

**Safeguard**

A safeguard is a temporary import control or other trade restriction that a country imposes to prevent injury to a domestic industry from import surges. It is designed to facilitate the adjustment of domestic industries to the influx of fairly traded imports.

**Sanitary and Phytosanitary Measures**

Sanitary and phytosanitary regulations are measures taken to protect human, animal, or plant life or health. WTO rules require these measures to be based on scientific principles and not act as disguised trade restrictions.

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Section 301 of the 1974 Trade Act	Section 301 is a U.S. law providing the United States with the domestic vehicle for pursuing redress against foreign policies or practices that burden or restrict U.S. commerce.
Services	Services consist of economic activities whose outputs are other than tangible goods, including businesses such as accounting, advertising, banking, engineering, insurance, management consulting, retail, tourism, transportation, and wholesale trade.
Subsidy	A subsidy is generally considered to be a bounty or a grant provided by a government that confers a financial benefit on the production, manufacture, or distribution of goods or services. Government subsidies include direct cash grants, concessionary loans, loan guarantees, and tax credits.
Tariff	A tariff is a tax imposed on imported goods, sometimes used to raise revenues or protect domestic industries from foreign competition.
Tariff-rate Quota System	A tariff-rate quota is the application of a lower tariff rate for a specified quantity of imported goods. Imports above this specified quantity face a higher tariff rate.
Technical Barriers to Trade	WTO members have the right to adopt the regulations, standards, testing, and certification procedures they consider appropriate — for example, for human, animal, or plant life or health, for the protection of the environment, or to meet other consumer interests. The WTO Agreement on Technical Barriers to Trade is intended to ensure that such measures do not create unnecessary obstacles to trade and to encourage countries to use international standards.
Trade-balancing Requirements	Trade-balancing requirements allow an investor to import goods only up to a specified amount, which is determined by the investor's locally produced exports. Governments use such requirements to maintain or achieve a favorable balance of trade.



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**Trade-related Investment Measures**

Trade-related investment measures require specific behavior from investors that affects trade. Trade-related investment measures are placed on foreign direct investment (that is, investment in factories or businesses) by governments in an effort to influence investment decisions such as the sourcing of goods, the location of production, and the sites for markets; and to increase the likelihood that the host nation will capture the benefits expected from the investment. Trade-related investment measures can be either mandatory or can take the form of an incentive for an investor.

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**Unfair Trade Practices**

Unfair trade practices include the dumping of an exported product below the price charged for the same good in the "home" market of the exporter, or the subsidizing of a product by a government.

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**Uruguay Round**

The Uruguay Round resulted in an agreement establishing the World Trade Organization. The Uruguay Round was the eighth and final round of multilateral trade negotiations held under the auspices of the GATT. These negotiations were initiated in Uruguay in September 1986 and concluded in April 1994.

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**World Trade Organization**

The WTO, which was established on January 1, 1995, as a result of the Uruguay Round agreements, administers rules for international trade and provides a forum for resolving trade disputes and conducting trade negotiations. The WTO provides the institutional framework for the multilateral trading system.

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